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Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

CITIZENS FOR A BETTER ENVIRONMENT, AN ILLINOIS NON-FOR-PROFIT CORPORATION, ET AL.,

Respondents,

vs.

VILLAGE OF SCHAUMBURG,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners, Village of Schaumburg.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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VILLAGE OF SCHAUMBURG,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Village of Schaumburg, an Illinois municipal corporation, petitions for writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit, rendered December 1, 1978.

OPINIONS BELOW.

The Seventh Circuit's decision of December 1, 1978, is reprinted in full as Appendix A to this petition.

The opinion of the Trial Court, entered February 17, 1978, is reprinted in full as Appendix B to this petition.

JURISDICTION.

The judgment of the Circuit Court of Appeals for the Seventh Circuit was entered on December 1, 1978. No petition for rehearing was filed.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1254. This petition for writ of certiorari has been filed in accordance with 28 U. S. C. § 2101.

QUESTIONS PRESENTED FOR REVIEW.

1. Were the plaintiffs entitled to a Summary Judgment holding Section 20(g) of the ordinance of the Village of Schaumburg regulating charitable solicitations invalid?

2. Is Section 20(g) of Chapter 22 of the Schaumburg Village Code, which requires that 75 percent of the proceeds of charitable solicitations will be used directly for the charitable purpose of the organization, unconstitutional either on its face or as applied?

3. Does a municipality have the right to prohibit purportedly charitable solicitations when the soliciting organization fails to demonstrate that at least 75 percent of its receipts are utilized for charitable purposes?

CONSTITUTIONAL PROVISIONS INVOLVED.

This case involves the First and Fourteenth Amendments of the Constitution of the United States. The relevant provisions are set forth in Appendix C to this petition.

STATEMENT OF THE CASE.

This is a complaint for declaratory judgment and injunction brought by an organization known as Citizens For A Better Environment and two of its officers against approximately twenty municipalities in the Chicago metropolitan area. The complaint challenged the validity of the various ordinances of the defendant municipalities which regulate the solicitation for funds by organizations within their corporate limits. The plaintiffs filed a motion for summary judgment. Certain of the municipal defendants were dismissed by agreement and the Court found provisions of various other ordinances to be unconstitutional as a violation of the First and Fourteenth Amendments.

The Village of Schaumburg, petitioner herein, had adopted an ordinance regulating charitable solicitations within the corporate limits of the Village (Appendix C). The ordinance provided a framework for the issuance of permits to charitable organizations desiring to solicit funds in the Village. The only provision of the ordinance challenged was a section which required, in essence, that at least 75 percent of the proceeds of the solicitations by the organization regulated be used directly for charitable purposes of the organization.

That section, designated 20(g) of Chapter 22 of the Village Code, required:

> "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
>
> (1) Salaries or commissions paid to solicitors;
>
> (2) Administrative expenses of the organization, including, but not limited to, salaries, attorney's fees, rents, telephone, advertising expenses, contributions to

other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization."

The plaintiff refused to submit the information necessary to satisfy this requirement and was denied a permit. No other sections of the ordinance were challenged and it was admitted that if all the conditions of the ordinance were met, the Village Board had no discretion and, by the terms of the ordinance, was required to issue such permit.

The Trial Court granted the plaintiffs' motion for summary judgment and filed a written opinion dated February 17, 1978 in which the Court held Section 20(g) to be unconstitutional noting that CBE was able and willing to comply with other requirements of the ordinance and did not challenge them. The Trial Court held that Section 20(g) was unconstitutional and void on its face and its enforcement against CBE was, therefore, enjoined.

The Court of Appeals affirmed the Trial Court but specifically held that it would not decide the reasonableness of the seventy-five percent requirement as applied to solicitation by more traditional charitable organizations. It did, however, hold the requirement is on its face unreasonable when applied to an organization which, by its nature, allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives and where its paid solicitors necessarily combine solicitation with other primary activities in the organization.

The Court of Appeals held that the Village had a legitimate interest in protecting its citizens from fraud by solicitors who

would use the funds for purposes other than those expressly or impliedly represented and pointed out that the 75 percent requirement might be valid where solicitors represent themselves as mere conduits for contributions. It held, however, that the standard was not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech.

The Court of Appeals recognized that the appropriate guidance on the issue was this Court's opinion in *Hynes* v. *Mayor of Oradell,* 425 U.S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976), but found that section 22-20(g) was not justified by this Court's ruling in *Hynes.*

The Court attempted to distinguish a decision of the Fifth Circuit, *National Foundation* v. *City of Ft. Worth,* 415 F. 2d 41 (5th Cir. 1969), *cert. denied,* 396 U. S. 1040 (1970), which upheld an ordinance which limited the cost of solicitation of charitable contributions to 20 percent of total receipts. The Seventh Circuit pointed out that the Fort Worth ordinance allowed an organization which did not meet the requirement to show that its percentage was not unreasonable.

The Court, in its opinion, ignored the Village's argument that the plaintiffs were not entitled to a summary judgment on the grounds that there were material issues of fact remaining for trial. The Court merely pointed out that since CBE's failure to qualify for a charitable solicitation permit was caused solely by its inability to meet the 75 percent requirement, it followed that any issue of fact as to the nature of CBE's particular activity was not material to its standing, therefore, not an obstacle to the granting of the motion for summary judgment.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The writ should be granted in this case because the decision of the Court of Appeals is clearly in conflict with this Court's decision in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976), and with the Fifth Circuit's opinion in *National Foundation* v. *City of Ft. Worth*, 415 F. 2d 41 (5th Cir. 1969).

Moreoyer, the opinion ignores the principle originally laid down by this Court in *Breard* v. *Alexandria*, 341 U. S. 622, 95 L. Ed. 1233. These cases clearly hold that the First Amendment is not grounds for forcing a municipality to permit solicitation of funds within its corporate limits and that a municipality may properly regulate door-to-door canvassing and solicitation. The thrust of the *Oradell* decision is to recognize a municipality's power to protect its citizens not only from crime, but undue annoyance by solicitors purportedly acting in a charitable cause.

The opinion of the Court of Appeals will have the effect of granting absolute license to any organization, which purports to be charitable in nature, to abuse the rights of citizens and homeowners in the name of the First Amendment. The opinion itself is inconsistent because it recognizes that the 75 percent requirement is not unreasonable on its face and yet grants a motion for summary judgment thereby denying to the defendant the opportunity to show the reasonableness of the 75 percent requirement. The net effect is that every municipality in the country must now permit any organization, which designates itself as charitable, to enjoy unlimited solicitation priviliges notwithstanding the fact that the funds so derived may be used for purposes far removed from the concepts of charity.

This Court cannot be unmindful of the continuing threat to the safety and privacy of private citizens posed by a multitude

of organizations organized for nefarious purposes but hiding behind the shield of "charity" or purportedly disseminating information. The Court of Appeals assumed that the organization in question here performed the "functions of information dissemination, discussion, and advocacy of public issues." This assumption is controverted in the pleadings and the defendant was not given the opportunity on a trial of the issues to test these allegations.

The result of this opinion, therefore, is that a simple allegation that a gorup is engaged in the dissemination of ideas or the promotion of legislation or other governmental activity will guarantee its immunity from the kind of effort to screen such organizations, employed by the Village of Schaumburg here.

It must be emphasized that the Village does not seek a total ban on such solicitations. It has reasonable regulations relating to solicitation for commercial purposes which are not at issue here. The only question is whether the Village of Schaumburg can properly require that 75 percent of the funds collected by a "charitable" not-for-profit organization be devoted to the purposes for which the organization purportedly was created, as a condition of a permit. The Court of Appeals recognized that such a requirement was not unreasonable on its face and yet denied the defer lant the opportunity to show the reasonableness as applied to this specific organization. Such a determination is contrary to the decisions of this Court and finds no justification in the First Amendment.

ARGUMENT.

I.

THE PLAINTIFFS WERE NOT ENTITLED TO A SUMMARY JUDGMENT.

This is a declaratory judgment and injunction action brought by the Citizens for a Better Environment against the Village of Schaumburg seeking a declaration that the ordinance of the Village of Schaumburg regulating charitable organizations is unconstitutional and seeking an injunction against the enforcement of the ordinance by the Village. The plaintiffs filed a motion for summary judgment at the same time that they filed an amended complaint for declaratory judgment and injunction. The Village filed an answer to the amended complaint and an answer to the motion for summary judgment. The motion for summary judgment was based on the contention of the plaintiffs that upon all the records filed and proceedings in the case there was no genuine issue as to any material fact and that the plaintiffs were entitled to judgment as a matter of law.

An examination of the pleadings, the affidavit in support of the motion for summary judgment, and the answer to the motion filed by the Village, indicates clearly that there are in fact material issues which prevent the granting of the motion for summary judgment and the trial court therefore erred in granting the motion.

Ae we shall demonstrate below, it is clear that as a matter of law the ordinance of the Village of Schaumburg, including the controverted section, Section 22-20(g), is wholly valid as a matter of law. The ordinance does not impinge upon any federally protected constitutional rights and is a reasonable exercise of the police power.

Thus, it is clear that the plaintiffs were not entitled to a summary judgment holding that the ordinance was unconstitutional on its face as a matter of law. However, it is also clear that the pleading, the motions and other matters in the files indicate clearly that there are material issues of fact upon which the court could only rule after taking evidence and conducting a trial.

The rules with respect to summary judgment are well known and extensive discussion and citation are not necessary here, Rule 56(c) of the Rules of Civil Procedure relating to motions for summary judgment provides in part: "The judgment sought shall be rendered forthwith if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

This Court on numerous occasions has considered the implications of the motion for summary judgment and has refused to approve summary judgments when inferences could be drawn from underlying facts, which when viewed in the light most favorable to the party opposing the motion, would indicate the presence of a material issue of fact. In the case of *Associated Press* v. *United States of America*, 326 U. S. 1, 89 L. Ed. 2013, 65 S. Ct. 1416 (1945), the Court noted that: "Rule 56 should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them."

In the case of *Sartor* v. *Arkansas Nat. Gas Corp.*, 321 U. S. 620, 88 L. Ed. 967 (1943), the Court, in holding that a summary judgment was improperly granted, commented at page 627:

> "The Court of Appeals below heretofore has correctly noted that Rule 56 authorizes summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose of the rule is not to cut litigants off from their right of trial by

jury if they realy have issues to try. American Ins. Co. v. Gentile Bros. Co. (CCA 5th) 109 F(2d) 732; Whitaker v. Coleman (CCA 5th) 115 F(2d) 305)."

The Court went on to conclude at page 628:

"It may well be that the weight of the evidence would be found on a trial to be with defendant. But it may not withdraw these witnesses from cross-examination, the best method yet devised for testing trustworthiness of testimony. And their credibility and the weight to be given to their opinions is to be determined, after trial, in the regular manner. The judgment according is reversed."

The Court in the leading case of *United States* v. *Diebold*, 369 U. S. 654, 8 L. Ed. 2d 176, 177 (1962), said: "On summary judgment the inferences to be drawn from the underlying facts contained in (such) materials must be viewed in the light most favorable to the party opposing the motion." The Court there concluded that the materials before the District Court, having raised a genuine issue as to ultimate facts, it was improper to decide the issue on a motion for summary judgment.

In the case of *Adickes* v. *Kress & Co.*, 398 U. S. 144, 26 L. Ed. 2d 142 (1970), the Court again discussed at length the criteria for granting a motion for summary judgment. At page 152, the Court said:

"Our own scrutiny of the factual allegations of petitioner's complaint, as well as the material found in the affidavits and depositions presented by Kress to the District Court, however, convinces us that summary judgment was improper here, for we think respondent failed to carry its burden of showing the absence of any genuine issue of fact."

The Court went on to say at 398 U. S. 158:

"'[o]n summary judgment the inferences to be drawn from the underlying facts contained in [the moving party's] materials must be viewed in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 US 654, 655, 8 L.Ed 2d 176, 177, 82 S Ct. 993] (1962)."

It further commented at 160:

"And, in a comment directed specifically to a contention like respondent's, the Committee stated that '[w]here the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied *even if no opposing evidentiary matter is presented.*'"

It concluded its discussion of the motion for summary judgment at page 161 when it said:

"Yet the party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and if he does not discharge that burden then he is not entitled to judgment. No defense to an insufficient showing is required." 6 J. Moore, Federal Practice ¶ 56.22[2], pp. 2824-2825 (2d Ed 1966)."

The basic rule was also well stated in *Poller* v. *Columbia Broadcasting System*, 368 U. S. 464, 7 L. Ed. 2d 458 (1962), where the Court at page 461 said:

"Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that [except as to the amount of damages] there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' Rule 56(c), Fed Rules Civ Proc. This rule authorizes summary judgment 'only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, . . . [and where] no genuine issue remains for trial . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." Sartor v. Arkansas Natural Gas Corp. 321 US 620, 627, 88 L ed 967, 972, 64 S Ct 724 (1944)."

The affidavit of Larry Hoellwarth in support of the motion for summary judgment is not helpful in determining whether or not there are material issues of fact to be decided. The only allegation of the affidavit which bears upon what the plaintiffs actually do is paragraph 8 of the affidavit which in essence

states that representatives of CBE distribute pamphlets on environmental subjects and on CBE activities, answer questions, accept signatures, and accepts contributions from residents. Such activities, even if in fact true, would not necessarily preclude the type of regulation contained in the Schaumburg ordinance.

If, as the trial court is required to do, it drew inferences most favorable to the party opposing the motion, it could well infer that the activities described by Hoellwarth are in fact of a fully commercial nature. As the cases on door-to-door solicitation point out, there is a dichotomy between the exercise of freedom of speech and religion on the one hand and purely commercial activities on the other. The Village has adopted regulations covering commercial peddlers and solicitation which are not in issue here. The mere fact that the material which is sold may be informative does not change the commercial character of the business undertaking. Likewise, the mere fact that an organization is organized as not-for-profit, or even approved by the Attorney General as a charitable organization, does not mean that the solicitation itself is not commercial in nature. It is because of the fact that the Village desires to make certain that commercial activities are not clothed with the appearance of charity that the requirement of a 75% devotion of funds to the charitable purposes has been imposed. Certainly, the affidavit of Hoellwarth, which was not subject to cross-examination as the result of the granting of the motion for summary judgment, is insufficient standing by itself to support a motion for summary judgment. Yet, only that affidavit appears in the record to support the purported First Amendment activities of the plaintiffs.

The Village at least should be entitled to inquire into whether what CBE does is protected under the First and Fourteenth Amendments. It was effectively precluded from doing so by the granting of the motion for summary judgment. The factual background of this controversy as sketched in the pleadings and as revealed in the Hoellwarth affidavit is so incomplete as to preclude the entry of a summary judgment.

We therefore respectfully suggest that the trial court as a matter of law erred in granting the motion for summary judgment, and this cause should have been remanded for the purpose of determining whether the trial court had jurisdiction under the statutes and constitutional provisions invoked to even consider the controversy. The trial court should also be required to take evidence on the question of just what CBE in fact does, which brings it within the purview of First Amendment protections. In this connection it might be noted that attached to the Village's answer as an exhibit in support of its allegations on information and belief, was a newspaper article headlined "Is $$ Real Cause in Clean Air Fight?" The information contained in that article at least gives some basis for believing that CBE is engaged primarily and overwhelmingly in the business of making money for its officers and canvassers. Whatever the merits of the free enterprise system as applied to these canvassers, the truth of the alleged facts must be determined in order to ascertain the extent to which the activities in question are subject to First Amendment protection.

It should be noted that the plaintiffs did not file a reply or in any manner controvert the allegations in the Village's answer. Therefore, for the purposes of the motion for summary judgment, the allegations in the answer as affirmative defenses, including the exhibit, must be taken as true. The exhibit indicates that more than two-thirds of the $290,399 collected by CBE in fiscal year 1974-75 was spent on salaries and employee health benefits. Slightly smaller percentages have been spent on salaries each year since CBE's founding. The exhibit points out that about 69% of the salaries were paid to solicitors and fundraisers and 31% to program organizers, and contrasts these figures with the salary and benefit costs of 27% for the American Cancer Society, 15% for the Heart of Illinois United Way Organization, and 22% for the Chicago Chapter of the National Multiple Sclerosis Society.

It should also be noted that the New York Attorney General's office filed suit against CBE, charging the organization had perpetrated a "fraud upon the public" by using 74% of the $175,808 collected in fiscal year 1972-73 for administration and fund raising expenses. The suit never came to trial because ofthe demise of the New York organization.

We suggest that these allegations, which are stated on information and belief, as shown on an exhibit to our answer, raise serious questions as to whether or not the activities of the plaintiffs are in fact a charitable, not-for-profit activity which is protected by the First and Fourteenth Amendments. We believe we are entitled to a trial on these issues, and that the trial court erred in granting the motion for summary judgment.

The Court of Appeals, in its opinion, ignores the question as to whether a summary judgment was proper because of the presence of controverted material issues of fact. The Court concludes that the constitutional validity of Section 22-20(g) is solely a question of law. However, subsequently the Court specifically determines that it will not pass upon the reasonableness of the 75 percent requirement as applied to the "more traditional charitable organizations.

The Court, however, goes on to say, "the requirement is on its face unreasonable when applied to an organization which by its nature *allegedly* devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization." (Emphasis added.)

Yet the record does not permit the Court to reach this conclusion with respect to the nature of the organization in question. The very nature of the organization is controverted in the pleadings. The Court of Appeals could not reach the conclusion that the ordinance was unconstitutional on its face without passing upon its reasonableness generally, absent a factual determination as to the nature of the organization in question.

We believe that this Court should grant the petition for Writ of Certiorari because of the vital constitutional questions involved. We believe that the First Amendment does not prevent the Village from enacting the ordinance in question here. We would be remiss, however, if we did not point out that the very posture of this case, decided as it was on a motion for summary judgment when material issues of fact remained to be decided makes the cause inappropriate for the kind of determination made by the Court of Appeals.

II.

SECTION 20(g) OF CHAPTER 22 OF THE SCHAUMBURG VILLAGE CODE IS NOT UNCONSTITUTIONAL ON ITS FACE OR AS APPLIED.

The ambiguous opinion of the Court of Appeals apparently recognizes that the 75 percent requirement as a pre-condition to a charitable solicitation permit is not unreasonable on its face. Having so determined, the Court of Appeals should have reversed the Trial Court for the purpose of taking evidence as to the reasonableness of such requirement as applied to the organization in question. Instead, the Court makes a pronouncement that the 75 percent requirement is on its face unreasonable "when applied to an organization which, by its nature, *allegedly* devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization." (Emphasis added.)

The Court goes on to recognize as it must, based upon this Court's opinion in *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976), that the Village has a legitimate interest in protecting its citizens from a fraud by solicitors. The Court says it has a similar interest in identifying organzations where the salaries paid are so large in relation to

the services provided that the organization is actually a for-profit venture.

The Court of Appeals objects that the requirement applies where it is made clear that the contributions will be used for reasonable salaries, yet the Court prohibited an inquiry into the question of reasonableness. But, even if this Court should conclude that the only issue present is a question of law, we submit that the section in question is clearly valid.

The most recent authoritative decision with respect to the question presented is the decision of this Court in *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 48 L. Ed. 2d 243 (1976). That case involved the constitutionality of a burough ordinance requiring that any person, including representatives of civic groups and organizations desiring to canvass or solicit for a recognized charitable cause or for a political campaign or cause, must notify the police department in writing for identification only.

The Court held that the ordinance in question was invalid because the ordinance's coverage was unclear, there being no explanation as to what was a "recognized charity" and what was meant by a "federal, state, county or municipal . . . cause" or what groups fell into the class of borough civic groups and organizations. The Court further held that the ordinance did not sufficiently specify what actions were necessary for compliance, there being no explanation as to what must be included in the notice or what the police considered sufficient as identification and explicit standards were not provided for those who applied the ordinance.

However, the case is most significant for laying down certain basic propositions which are totally controlling in the case at bar. The thrust of the *Oradell* case is clearly that a municipality has the right to protect its citizens from crime and annoyance by regulating soliciting and canvassing and that there is no absolute right under the Constitution to make such solicitation. Although the ordinance in question in the *Oradell* case was held to be

invalid, it was held invalid because of vagueness and lack of standards. These defects are clearly not present in the Schaumburg ordinance. The Court specifically pointed out that:

> ". . . the court has consistently recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing. A narrowly drawn ordinance, that does not vest in municipal officials the undefined power to determine what messages residents will hear, may serve these important interests without running afoul of the First Amendment." 425 U. S. 610, 616, 48 L. ed. 2d 243, 251.

At 48 L. ed. 2d 252 the Court went on to use language which is totally controlling in the case at bar, it said:

> "There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety. We cannot say, and indeed appellants do not argue, that door-to-door canvassing and solicitation are immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home. See Roman v. Post Office Dept., 397 U. S. 728, 735-738, 25 L. Ed. 2d 736, 90 S. Ct. 1484 (1970)."

The Court held the ordinance in question unconstitutional because of vagueness. The provisions in question, which the Court found defective, included a phrase, "recognized charitable cause" and a "federal, state, county or municipal cause". Finally it was not clear in the ordinance what groups fell into the class of "Borough Civic Groups and Organizations" that the ordinance also covered. 425 U. S. 621, 48 L. ed. 2d 243, 253.

The ordinance in question also failed because it did not sufficiently specify what these within its reach had to do in order to comply.

These defects in the *Oradell* ordinance do not exist in the Schaumburg ordinance. The ordinance is absolutely and totally clear both with respect to the standards to be applied and the

manner in which a permit is to be sought. Section 22-19 of the ordinance clearly defines a charitable organization. Moreover the provisions of Section 22-20 explaining the contents of the application resolve any doubt as who or what organization is in fact covered by the ordinance in question.

The contents of the application are specifically spelled out in subparagraphs (a) through (g) of Section 22-20. Included are the name of the organization, name and address of the person in charge of solicitation, the names and addresses of all persons who will solicit, the dates and times of day such solicitation are to be made, a written statement of recent date by the Attorney General of the State of Illinois indicating that the organization has complied with the State Statute regulating solicitation and collection of funds for charitable purposes, satisfactory proof that the organization is a tax exempt organization under the Internal Revenue code of the United States and satisfactory proof that at least 75% of the proceeds of such solicitations will be used directly for the charitable purposes of the organization.

The ordinance further provides what items will not be deemed to be used for charitable purposes including salaries and commissions paid to solicitors and salaries, attorneys fees, rent, telephone, advertising expenses, contributions to other organizations and purposes except as a charitable contribution and related expenses incurred as administrative or overhead items.

The manner in which the application is to be submitted and processed is also specifically spelled out in Section 22-21, Section 22-22 and Section 22-24. For the purpose of satisfying the requirement of 75% of the proceeds being used directly for charitable purposes the organization is to submit a certified audit of the last full year of operation.

Thus the standards and the manner of application are spelled out, clearly and specifically and the problem of lack of standards which proved fatal in the *Hynes* case simply does not exist with respect to the Schaumburg ordinance. The ordinance is also clear that no discretion is vested in the Village Board. Section

22-21 specifically provides: "If the Village Board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place".

The hours of solicitation are set forth in Section 22-24. The dates and times of day such solicitations are to be made in the geographical area within the Village is determined by the application under Section 22-20. It necessarily follows that under doctrine of *Hynes* v. *Mayor of Oradell* the Schaumburg ordinance is totally and completely valid. It was enacted pursuant to the recognized authority of municipalities to regulate canvassing and soliciting under the police power to protect its citizens from fraud and danger and to protect the peaceful enjoyment of the home. The standards guiding the issuance of permits are specific and reasonable. The ordinance does not leave any discretion in the hands of the Village Board. All parties who meet the provisions of the ordinance are entitled to a permit to solicit.

The power of a municipality to regulate soliciting even in the face of a First Amendment challenge was first recognized by this Court in the case of *Breard* v. *Alexandria*, 341 U. S. 622, 95 L. ed. 1233. In the *Breard* case, the Court treated at length the history of the so-called Green River ordinance. It referred with approval to the original decision in *Town of Green River* v. *Fuller Brush Company*, 65 F. 2d 112, where the ordinance declared uninvited solicitors visiting private premises to be a nuisance, and the Federal Court sustained the ordinance as not being in violation of any federal rights. In *Breard*, as in the case at bar, the canvassers were selling publications and the ordinance prohibiting them from soliciting door to door was alleged to abridge freedom of speech and press. The court pointed out: "We agree that the fact that periodicals are sold does not put them beyond the protection of the First Amendment. The selling, however, brings into the transaction a commercial feature." The court concluded:

> "It would be, it seems to us, a misuse of the great guarantees of free speech and free press to use those guarantees to

> force a community to admit the solicitors of publications to the home premises of its residents. We see no abridgement of the principles of the First Amendment in this ordinance."

The court pointed out that in an earlier case involving a Green River ordinance, *Green River* v. *Bunger*, 50 Wyo. 52, 58 P. 2d 456, the Court had dismissed an appeal for lack of a substantial federal question.

Two other state cases involving substantially the same kind of questions as applied to Jehovah's Witnesses were dismissed by this Court for lack of a federal question. *Hall* v. *Commonwealth*, 188 Va. 72, 335 U. S. 875; *Watchtower Bible & Tract Society* v. *Metropolitan Life Insurance Company*, 272 App. Div. 1039, 335 U. S. 886.

This Court has repeatedly held that the First Amendment does not give unbridled discretion for the exercise of free speech on private property, or even on public property. Thus, in the case of *Tinker* v. *DesMoines Community School District*, 393 U. S. 503, 21 L. Ed. 2d 731 (1969), Mr. Justice Black in a dissenting opinion pointed out at page 517:

> "While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In Cox v Louisiana, 379 US 536, 554, 13 L Ed 2d 471, 85 S Ct 453 (1965), for example, the Court clearly stated that the rights of free speech and assembly 'do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.' "

Moreover, it is clear that the First Amendment does not require that individuals be permitted to go on private property to express their opinions, *Lloyd Corp.* v. *Tanner*, 407 U. S. 551, 33 L. Ed. 2d 131, and a municipality can even prevent the use of public streets by ordinance when the exercise of freedom of

speech would result in an interference with normal activities. *Grayned* v. *City of Rockford*, 408 U. S. 104, 33 L. Ed. 2d 222 (1972). In the *Grayned* case incidentally, the Supreme Court rejected an argument of overbreadth and vagueness as applied to a municipal ordinance considerably less specific than the ordinance in the case at bar.

It is stated by the Court of Appeals that the 75% standard is unreasonable as applied here. Yet, this is a matter for proof and not for mere conclusion. The legislative body certainly could reasonably conclude that a 75% requirement for the use of funds by an organization purporting to be charitable in nature was reasonable. The burden would be upon the plaintiffs to overcome the presumption of validity attaching to that legislative action. The mere conclusion that the standard is unreasonable as applied falls far short of the proof necessary to hold an ordinance unconstitutional.

As a matter of fact, the United States Court of Appeals for the Fifth Circuit has specifically held constitutional an ordinance which limited the cost of solicitation of charitable contributions within the city to 20% of the total receipts. In the case of *National Foundation* v. *City of Fort Worth*, 415 F. 2d 41 (1969), the Court at page 45 said:

> "No constitutional right exists to make public solicitation of funds for charity. The reasonable regulation of charitable organizations is within a government's police power. Cantwell v. State of Connecticut, 310 U.S. 296, 304, 60 S.Ct. 900, 84 L.Ed. 1213; American Cancer Society v. City of Dayton, 1953, 160 Ohio St. 114, 114 N.E.2d 219; Gospel Army v. City of Los Angeles, 1945 27 Cal.2d 232, 163 P.2d 704; Eye Dog Foundation v. State Board of Guide Dogs, supra 63 Cal.Rptr. at 30, 432 P.2d at 726; City of Seattle v. Rogers, 1940, 6 Wash.2d 32, 106 P.2d 598, 130 A.L.R. 1498; Ex parte Williams, 1940, 345 Mo. 1121, 139 S.W.2d 485, cert. denied Williams v. Golden, 311 U.S. 675, 61 S.Ct. 42, 85 L.Ed. 434; Ex parte White, 1935, 56 Okl.Cir. 418, 41 P.2d 488; Ex parte Dart, 172 Cal. 47, 155 P. 63 L.R.A. 1916D,

905, Ann.Cas. 1917D, 1127. In Cantwell, supra, the Supreme Court stated that:

> "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." 310 U. S. at 306-307, 60 S. Ct. at 904.

Since the solicitation of funds for charity may be the subject of state regulation, we now inquire whether the ordinance adopted by the City to regulate public solicitation on the streets of Fort Worth was a reasonable exercise of its police power."

It went on to consider whether or not the ordinance in question was reasonable. At page 46, the Court of Appeals recognized the right of the municipality to deny permission to solicit if the cost of collection was excessive. It said:

> "As an incident to the right of a city to regulate the use of its streets by solicitors and as an element of the protection a city may afford its citizens, a city may reasonably require of one who wishes to solicit that he furnish it with a statement of the past and expected receipts and costs of collection of the funds solicited within its limits and to deny permission to solicit if the cost of collection is excessive."

Finally, the Court recognized that the burden was on the plaintiff to establish that the ordinance was unreasonable. It said at page 46:

> "Upon the Foundation rested the burden of establishing that the ordinance did not rest on any reasonable basis. Goldblatt v. Town of Hempstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130. It did not meet this burden and we cannot say that the limitation provisions of the ordinance are unreasonable, especially in light of the strong presumption of constitutionality afforded an ordinance. Goldblatt v. Town of Hempstead, supra; Mestre v. City of Atlanta, 5th Cir. 1958, 255 F.2d 401; Standard Oil Co. v. City of Tallahassee, 5th Cir. 1950, 183 F.2d 410, cert. denied 340 U.S. 892, 71 S.Ct. 208, 95 L.Ed. 647; City of Anchorage v. Richardson Vista Corp., 9th Cir. 1957, 242 F.2d 276; City of Seattle v. Rogers, supra; American Cancer Society v. City of Dayton, supra at 223 of 114 N.E.2d. The standards fixed by the ordinance are a valid and constitutional means of achieving the City's purpose of protecting its citizens."

The Court then went on to reject an argument that the ordinance was lacking in definite and certain standards. An examination of the ordinance, which is set forth in a footnote to the opinion, makes it clear that the Fort Worth ordinance was not nearly as specific or definite as the Schaumburg ordinance. It would appear that the case of *National Foundation* v. *City of Fort Worth* is totally controlling on the issues in this case. At the very least, the holding in the case indicates that a motion for summary judgment was totally improper, and that the Village is entitled to a trial, at least on the question of the reasonableness of the 75% restriction. Since the 75% restriction is the only point in issue, the Court of Appeals conclusion that the standard is unreasonable certainly does not conform with the decision in the *National Foundation* case.

The Court of Appeals attempts to distinguish the *National Foundation* case on the grounds that an organization which did not meet the requirement was given the opportunity to show that its percentage was not unreasonable.

The Fifth Circuit opinion is not based upon such a distinction. The quotation from the case, which appears in the Court of Appeals opinion, is taken out of context and was not the basis upon which the opinion rests. Instead, as indicated above, the Court clearly held that a city may reasonably require of one who wishes to solicit, a statement of the past and expected receipts and costs of collection and to deny permission to solicit if the cost of collection is excessive. Unlike the Fort Worth ordinance, the Schaumburg ordinance contains specific standards

by which to measure the application for a permit. The element of discretion is totally removed.

At the very least, the question as to whether the 75 percent requirement is unreasonable as applied, is a question fact which must be determined by a trial. Yet, contrary to the specific holding in the *Fort Worth* case, the Court of Appeals here makes a determination that the 75 percent requirement is unreasonable on its face when applied to an organization *allegedly* carrying out activities which the Court of Appeals deems to be non-commercial in nature.

The Court of Appeals says, "the 75 percent requirement might be valid where solicitors represent themselves as mere conduits for contributions." There is nothing in the record to indicate that anything to the contrary is represented. But the Court of Appeals then goes on to say that the standard is thus not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The Court of Appeals ignores the fact that the 75 percent requirement does in fact provide such a solution recognized as valid in the *National Foundation* case.

The Court of Appeals, in its opinion, relies upon *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940), *Schneider* v. *State*, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939), and *Martin* v. *Struthers*, 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943). These cases are clearly not applicable here. In each of these cases, this Court determined that the ordinances in question involved administrative discretion without standards. This Court considered *Cantwell* at length in the *Oradell* case. It also clearly distinguished *Schneider* v. *State* and *Martin* v. *Struthers*. These cases involved ordinances which required permits without standards and vested unbridled discretion in an administrative officer or simply prevented canvassing completely.

As a matter of fact, in the *Cantwell* case this Court said, "without doubt a state may protect its citizens from fraudulent

solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish identity and his authority to act for the cause which he purports to represent." 48 L. ed. 2d 252.

In commenting on the very cases relied upon by the Court here, the court in *Oradell* said:

> "These opinions of the Court and the dissenting opinions found common ground as to the important municipal interests at stake. See Martin v. Struthers, supra, at 152, 87 L. Ed. 1313, 63 S. Ct. 862 (Frankfurter, J., dissenting); id., at 154, 87 L. Ed. 1313, 63 S. Ct. 862 (Reed, J., dissenting); Douglas v. Jeannette, 319 U. S. 157, 166, 87 L. Ed. 1324, 63 S. Ct. 877 (1963) (Jackson J., dissenting in Martin v. Struthers). Professor Zechariah Chafee articulated something of the householder's right to be let alone, saying:
>
> > 'Of all the methods of spreading unpopular ideas, [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself up in his own ideas if he desires.' Free speech in the United States 406 (1954).
>
> Professor Chafee went on to note: '[These cases] do not invalidate all ordinances that include within their scope . . . doorway dissemination of thought. Several sentences in the opinions state that ordinances suitably designed to take care of legitimate social interests are not void.' Id., at 407."

It must be emphasized that this case is not one where the granting of a permit is at the discretion of the Chief of Police, the Village Board, or any other official. Permits are granted in a mandatory fashion to all who meet the requirements of the ordinance. The ordinance contains clear and definite standards which are reasonably utilized to determine the identity of a truly charitable organization. The standards include approval by the Attorney General, and tax-exempt status under the Internal Revenue Code.

The other standard which the Court of Appeals sets aside by fiat, has to do with the amount of funds actually expended for charitable purposes.

The quotation from Justice Brennan in *Hynes* quoting *Thomas* v. *Collins*, 323 U. S. 516, 65 S. Ct. 315, 323, 89 L. Ed. 440 (1945), is not relevant. Justice Brennan's remarks clearly were related to restraining orderly discussion and persuasion at an appropriate time and place. We suggest that the invasion of a private home uninvited and at inappropriate hours is not a proper time and place for orderly discussion and persuasion. We think it is clear that Section 20(g) of Chapter 22 of the Schaumburg Village Code is not invalid on its face nor as applied to the plaintiffs' organization here.

The opinion of the Court of Appeals flies in the face of this Court's rulings in *Breard* and *Hynes* and that of the Fifth Circuit in the *National Foundation* case. It opens the door to unrestricted solicitation in the name of charity by organizations which are nothing more nor less than fraudulent devices to enrich the sponsors at the expense of the unwitting public. The magnificent edifice of the First Amendment should not be utilized to sanction such a sorry effort.

III.

A MUNICIPALITY HAS THE RIGHT TO PROHIBIT PURPORTED CHARITABLE SOLICITATIONS WHEN THE SOLICITING ORGANIZATION FAILS TO DEMONSTRATE THAT AT LEAST 75 PERCENT OF ITS RECEIPTS ARE UTILIZED FOR CHARITABLE PURPOSES.

This case presents a simple question as to whether a municipality may, in the interest of protecting the public from fraud, crime and undue annoyance, prohibit door-to-door solicitation for funds on private property by an allegedly charitable organ-

ization which devotes more than one quarter of its collections for other than the charitable purposes of the organization.

We believe we have demonstrated above that this Court has repeatedly recognized in *Oradell* and even *Cantwell* and *Martin* v. *Struthers* that there are important municipal interests at stake. Professor Chaffee has articulated the householder's right to be left alone pointing out that the possibilities of persuasion are slight compared to the certainty of annoyance.

The cases which have invalidated ordinances which purported to regulate or prohibit door-to-door solicitation turned upon the unabridged discretion, vested usually in administrative officers and did not announce a rule that such solicitation in the name of charity was beyond the scope of reasonable municipal regulation. When, as is apparently the case here, a majority of the funds are utilized not for the charitable purposes for which the organization is purportedly organized, but instead to compensate canvassers, officers, and employees, it must be concluded that what is involved is nothing more nor less than a commercial enterprise even though it be dressed in the trappings of a charitable or environmental purpose.

Schaumburg's ordinance is intimately related to the articulated substantial governmental interests clearly recognized by this Court in *Hynes* and *Breard*. The protections of citizens from crime and undue annoyance and in the quiet enjoyment of their homes are well recognized, articulated and substantial governmental interests. In fact, they are paramount objectives of any organized society.

If a citizen inquires as to whether a solicitor has received a permit from a municipality, he knows immediately whether or not the solicitor represents a charitable organization as recognized by the Village or is involved in either a commercial or even fraudulent enterprise. A homeowner has a legitimate right to know whether or not the solicitor who presents himself at his door as a representative of a charitable organization is in fact telling the truth.

The Village, as an exercise of its police power, clearly has the right to prescreen individuals who would represent themselves as charitable solicitors. The Village, of course, is not censoring the views of CBE or any other group. All the traditional methods of communication are open, be they radio, television, newspapers or even handbills in the public streets. All the Village is seeking is to require that persons who go upon the private property of its citizens and represent themselves as charitable solicitors are in fact what they claim to be. No legitimate views are being barred from the Village of Schaumburg nor is any chilling effect on the First Amendment presented.

We would be the first to agree that an ordinance of this nature must set forth standards which are specific and not vague. However, it is clear that this ordinance does in fact set forth specific standards. In the case of *Grayned* v. *City of Rockford*, 408 U. S. 104, 33 L. Ed. 2d 222, this Court was considering an ordinance which outlawed demonstrations near schools in session and the Rockford Anti-Noise Ordinance which prohibited disturbing a school session by willfully making a noise or diversion while on adjacent public or private grounds.

The Court held valid as not vague the anti-noise ordinance. The Court relying upon *Tinker* v. *DesMoines School District*, 393 U. S. 503, held that the ordinance was not overbroad or vague and further held that expressive activity may be prohibited if it materially disrupts classwork or involves substantial disorder or invasion of the rights of others. The Court went on to note that:

> "Rockford's modest restriction on some peaceful picketing represents a considered and specific legislative judgment that some kinds of expressive activities should be restricted at a particular time and place . . . Such a reasonable regulation is not inconsistent with the First and Fourteenth Amendments."

The specific standards of this ordinance make it clear that the Village can properly legislate to restrict some kinds of expressive

activity at a particular time and place, in this instance, at the domiciles of its citizens. We have previously discussed the *Oradell* case at length and pointed out that the standards imposed in the Schaumburg ordinance clearly meet the requirements of Justice Berger's opinion.

The Court of Appeals' opinion also attacks the definition of "charitable organization" or "charitable purpose" set forth in Section 22-19 of the Schaumburg ordinance; but, that section was never attacked or challenged for vagueness in the Court below. The Court of Appeals simply reached out to justify its untenable position by raising an issue which was not before the Trial Court.

This Court's decision in the *Hynes* case involves phrases which were totally unclear in the context of the ordinance there at issue. The Court held that there was an unbridled grant of discretion to an administrative officer and that the individuals subject to the ordinance could not know what the requirements of the ordinance were in fact. No such difficulties present themselves in the case at bar.

The standards of the ordinance are clear. The 75 percent requirement admittedly is not unreasonable on its face but only purportedly as applied by the Court of Appeals to a factual situation which was not properly before it.

The *National Foundation* case recognizes the right of a municipality to prohibit solicitations for funds by charitable organizations when in fact a disproportionate amount of the funds are not used for charitable purposes. We suggest that under the decisions of this Court and in the interest of the public welfare, a municipality does have the right to prohibit so-called charitable solicitations when less than 75 percent of its receipts are utilized for charitable purposes. To transform this exercise of municipal authority into a violation of the First and Fourteenth Amendments would, in the words of this Court in the *Breard* case, constitute "a misuse of the great guarantees of free speech and free press."

CONCLUSION.

This Court should grant the Writ of Certiorari because the recent opinion of the Court of Appeals is clearly contrary to this Court's holding in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976). The opinion flies in the face of the repeated holdings of this Court that solicitation for funds can be regulated by an ordinance carefully and narrowly drawn. The Court of Appeals opinion is also directly contrary to that of another Circuit, *National Foundation* v. *City of Fort Worth*, 415 F. 2d 41 (5th Cir. 1969), *cert. denied*, 396 U. S. 1040 (1970). It takes away the right of local municipalities to protect citizens in their homes, from fraud, crime or merely unwanted annoyances.

The Court of Appeals opinion affirms a summary judgment by holding unreasonable as applied, an ordinance provision which it admits could be reasonable on its face. At the same time, it denies the opportunity to present evidence on the question of reasonableness as applied.

The Court of Appeals misreads this Court's opinions to grant an unlimited license to solicit on the doorsteps of the homes of private citizens to any organization which *alleges* that it is engaged in the dissemination of information or the promotion of legislation or other governmental action. This kind of unbridled license is neither mandated nor required by the First Amendment but in fact does violence to the equally sacred constitutional principle of the right to be left alone.

The Court of Appeals for the Seventh Circuit has rendered a decision on an extremely important and far reaching question

which we suggest is clearly in conflict with the decisions of this Court and another Court of Appeals. It is a vitally important question which should be settled by this Court and the petition should be granted.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners, Village of Schaumburg.

APPENDIX A—OPINION OF SEVENTH CIRCUIT COURT OF APPEALS.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 78-1384

CITIZENS FOR A BETTER ENVIRONMENT, an Illinois not-for-profit corporation, and LARRY A. HOELLWARTH,
Plaintiffs-Appellees,

v.

VILLAGE OF SCHAUMBURG,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 76-C-470—Prentice H. Marshall, *Judge.*

ARGUED SEPTEMBER 18, 1978—DECIDED DECEMBER 1, 1978

Before FAIRCHILD, *Chief Judge,* KILKENNY, *Senior Circuit Judge*,* and BAUER, *Circuit Judge.*

FAIRCHILD, *Chief Judge.* This is an appeal from a judgment wherein a portion of a village code regulating solicitation by charitable organizations was found unconstitutional on its face.

The Village of Schaumburg (hereinafter "the Village"), defendant below and appellant here, is a municipal corporation and home rule municipality located in Cook County, Illinois. Chapter 22 of the Village code regulates the activities of peddlers and solicitors within the Village.

* The Honorable John F. Kilkenny, Senior Circuit Judge of the Ninth Circuit, is sitting by designation.

Article II (sections 22-6 through 22-18) regulates the activities of for-profit peddlers and solicitors, defined in section 22-6 as persons who go from place to place to sell or take orders for merchandise or services. A permit is required for such activity, and an application for a permit is to be denied "to any applicant who is not found to be a person of good character and reputation" (section 22-9). The permit may be revoked for violation of any Village ordinance or state or federal law, or when the registrant "shall cease to possess the qualifications and character required . . . for the original registration" (section 22-11). Violators of sections 22-6 through 22-17 are subject to a maximum fine of $500 for each offense (section 22-18).

Charitable solicitations, on the other hand, are regulated by article III (sections 22-19 through 22-24). Section 22-19 defines a charitable organization as "any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes." A charitable purpose is defined as "any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose." A permit is also required for charitable solicitations, but the requirements for the granting of a permit are different from those for for-profit peddlers and solicitors. For example, the organization must have complied with specified portions of state law relating to charitable solicitations and be recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code. Section 22-20(g) requires that 75 percent of the proceeds of solicitations must be used directly for the charitable purpose of the organization. Solicitors' salaries and administrative expenses (which include other employees' salaries) are deemed *not* used for the organization's charitable purpose.[1]

1. The requirement contained in section 22-20(g) is as follows:
(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the

(Footnote continued on next page.)

Citizens for a Better Environment (hereinafter "CBE"), plaintiff below and appellee here, is an organization whose stated purpose is the protection and improvement of the Illinois environment. CBE is registered and in good standing with the Illinois Attorney General's Charitable Trust Division, and is recognized as tax exempt and gifts to it as tax deductible under the United States Internal Revenue Code. CBE applied for and was denied a permit to canvass and solicit contributions from door-to-door in the Village and in various other municipalities in the Chicago metropolitan area.[2] CBE and two of its officers brought suit against these municipalities for a declaratory judgment and injunction.

The portions of the suit against the other municipalities were concluded in various ways. In the action against the Village, the district court, after recognizing that CBE met all other requirements of section 22-20 and the denial of permission to canvass in the Village was based solely on CBE's failure to meet the 75 percent requirement, declared, upon motion by CBE for summary judgment, that section 22-20(g) and the Village's action thereunder were constitutionally impermissible, enjoined further prohibition of CBE soliciting and canvassing in the Village, and ordered the Village to issue a permit to CBE forthwith. The rationale of the district court was that the 75 percent requirement was an impermissible form of censor-

(Footnote continued from preceding page.)

following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
(1) Salaries or commissions paid to solicitors;
(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

2. Counsel for CBE stated that it is the practice of the organization, regardless of its opinion of the validity of a particular regulation, to comply with municipal permit requirements if possible.

ship and a restraint on the exercise of First Amendment freedoms, and that the Village had no legitimate interest in prescribing such a test.

I.

CBE's failure to qualify for a charitable solicitation permit from the Village was caused solely by its inability to meet the 75 percent requirement, and the decision of the district court was limited to that requirement. Therefore on this appeal we are concerned only with the validity of tion 22-20(g).

The Village asserts that summary judgment by the district court was improper because material issues of fact were present. The Village raises a question as to the actual nature of CBE's activities; it asserts that as an organization mainly concerned with providing salaries for its members, CBE's activities are not within the protection of the First and Fourteenth Amendments, and thus the district court lacked jurisdiction to pass on the constitutionality of section 22-20(g). The Village also alleges that the 75 percent requirement is a reasonable way to protect its citizens by distinguishing commercial from charitable organizations, and at a minimum a trial was required to determine that reasonableness.

The Village also argues that section 22-20(g) is not unconstitutional on its face. This argument is based on the Village's evaluation of the provisions of chapter 22 in light of previous cases where the regulation of solicitation was declared unconstitutional, and on the Supreme Court's pronouncement that there is no absolute right to enter on private premises and solicit funds.[3] The Village concludes from its evaluation that the fatal flaws of vagueness and impermissible discretion of public officials are not present in chapter 22, that the provisions enjoy a presumption of constitutional validity that has not been over-

3. *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 619, 96 S. Ct. 1755, 1760, 48 L. Ed. 2d 243 (1976).

come, and that any infringement of First Amendment rights is minimal and a result of the Village's legitimate interest in protecting its citizens from fraud by those operating under the guise of charitable organizations.

CBE, on the other hand, argues that summary judgment was proper, alleging that classification of its particular activities is irrelevant to the question of constitutionality. CBE argues that section 22-20(g) is too restrictive of First Amendment freedoms and is thus invalid on its face; it provides an absolute bar to canvassing and soliciting if an organization does not meet the 75 percent requirement, it militates against certain types of organizations, it in effect requests information which has a "chilling effect" on the exercise of First Amendment rights, and it is not intimately related to the purpose of protection of the Village citizens from fraud.

II.

The special principles pertinent to First Amendment challenges lead to the conclusion that this action is properly brought by CBE. CBE applied for and was denied a permit to canvass in the Village. Thus a controversy exists, and CBE has the personal stake in the outcome required by this court in *Grandco Corp.* v. *Rockford,* 536 F. 2d 197, 207 (7th Cir. 1976). In that case a challenge to the facial validity of a movie theater licensing ordinance was allowed where the challenger needed to comply with the ordinance to operate its business and had applied for and been denied a license.

Furthermore, in the context of a First Amendment challenge, there is no additional requirement that CBE show it would not have been denied a permit under a constitutionally valid ordinance. This principle was stated by the Supreme Court in *NAACP* v. *Button,* 371 U. S. 415, 432, 83 S. Ct. 328, 337-38, 9 L. Ed. 2d 405 (1963):

> "[T]he instant decree may be invalid if it prohibits privileged exercises of First Amendment rights whether or not

> the record discloses that the petitioner has engaged in privileged conduct. For in appraising a statute's inhibitory effect on such rights, this Court has not hestitated to take into account possible applications of the statute in other factual contexts besides that at bar."

See also *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98, 60 S. Ct. 736, 741-42, 84 L. Ed. 1093 (1940). This court recognized the principle in *Grandco, supra.*

It thus follows that any issue of fact as to the nature of CBE's particular activities is not material to its standing to challenge the Village code on First Amendment grounds and is therefore not an obstacle to the granting of summary judgment.

III.

We turn now to the constitutional validity of section 22-20 (g). The Village asserts that the reasonableness of section 22-20(g) is an issue of fact. Undoubtedly the determination of reasonableness is a factual inquiry in many situations. However, in the present situation we conclude that the question is solely one of law; we perceive no relevant factual questions which require resolution.

We agree with both parties that the appropriate and most recent guidance on the issue before us is to be found in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976). Although the ordinance involved in *Hynes* was invalidated on the ground of vagueness,[4] the general guidelines the decision provides, evaluated in the context of prior decisions on the regulation of solicitation, support our decision here.

The Supreme Court stated in *Hynes* that there is no absolute right to enter on private premises and knock on another's door,

4. The ordinance at issue required registration with the police department, for identification purposes, by any person wishing to canvass or solicit for a charitable or political cause.

and that the police power permits ***reasonable*** regulation of this activity for the public safety. 425 U. S. at 619, 96 S. Ct. at 1760. However, when this regulation involves First Amendment activity, that regulation must be accomplished "so as not to intrude upon the right of free speech," 425 U. S. 616, 96 S. Ct. at 1758-59: it must be done "with narrow specificity," 425 U. S. at 620, 96 S. Ct. at 1760, be "suitably designed" to serve the legitimate interest involved, 425 U. S. at 619, 96 S. Ct. at 1760, and must not give broad discretionary powers to municipal officials in granting a permit, 425 U. S. at 617, 96 S. Ct. at 1759.

This framework is consistent with and further explained by previous Supreme Court decisions relating to the regulation of door-to-door solicitation. The Court has recognized the purposes of the protection of the people from fraud and disruption of the peaceful enjoyment of their homes, but has held invalid such regulation when it unreasonably obstructed the collection of funds, *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940), or when it, in fact, prohibited canvassing and solicitation, *Schneider* v. *State*, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939). In *Martin* v. *Struthers*, 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943), the Court recognized the need to balance the purposes of protection and peace against the traditions and values of free discussion and the dissemination of ideas.

If the restrictions placed on canvassing and soliciting by section 22-20(g) do not meet these standards, then the provision must fail. The fact that CBE may use other methods, such as the mails, to contact Village citizens is not relevant to the First Amendment challenges. See *Va. State Board of Pharmacy* v. *Va. Citizens Consumer Council, Inc.*, 425 U. S. 748, 757 n. 15, 96 S. Ct. 1817, 1823, 48 L. Ed. 2d 346 (1976). In addition, although duly enacted provisions normally enjoy a presumption of constitutionality, the rule is not applicable where there is a question of improper infringement of the exercise of First

Amendment rights. See *Organization for a Better Austin* v. *Keefe*, 402 U. S. 415, 419, 91 S. Ct. 1575, 29 L. Ed 2d 1 (1971), which vacated an injunction against the peaceful distribution of leaflets, stating that prior restraints bear a heavy burden *against* constitutionality.

Section 22-20(g) sets out specific standards for the granting of a permit; if these standards are met, the Village Board must grant the permit. Thus, the provision does not have the same facial defects of vagueness or broad discretion which have resulted in the invalidation of prior regulatory efforts. However, when the Court in *Hynes* stated that a narrowly drawn ordinance which does not give broad discretion to public officials "*may* serve these important [peace and protection] interests without running afoul of the First Amendment," 425 U. S. at 616, 96 S. Ct. at 1759, [emphasis added], it could not have meant that any ordinance which avoids those two pitfalls automatically meets First Amendment standards.

Chapter 22 does present problems similar to those encountered with regulations previously struck down for vagueness. Articles II and III do not necessarily cover all possible situations of door-to-door solicitation. There is, for example, no express exemption from the charitable solicitation provisions for religious or political campaign canvassing combined with solicitation of funds, although this type of activity is arguably within the section 22-19 broad definition.[5] In addition, it is unclear, as Village counsel admits, whether non-scientific research activities

5. The Village argues that religious and political organizations are not under sections 22-19 through 22-24 because they are not specifically enumerated in section 22-19. This is certainly not apparent on the face of the provision; indeed it seems inconsistent with the broad definition employed. Village counsel admits that inclusion of religious organizations probably would result in impairment of the First Amendment freedoms of such organizations.

The Illinois statutes regulating charitable solicitation employ essentially the same definitions for charitable organization and charitable purpose as the Village code; however, there is express exemption from the registration requirements for religious organizations. Ill. Rev. Stat. ch. 23, §§ 5101(a)(f), 5103(a).

could be deemed part of an organization's charitable purpose. The logical implication of excluding all salaries from charitable purpose is that it would not be so classified. Furthermore, it is unclear whether organizations which neither meet the requirements of section 22-20 nor come under the definitions of for-profit peddlers and solicitors are subject to any regulation under the Village code.[6]

Once an organization does fall under the Village's broad definition of charitable organization, however, it is apparently absolutely prohibited from canvassing and soliciting in the Village if it does not meet the 75 percent requirement, or, as the Village suggests in the case of CBE, it is forced to meet the more strict requirements for for-profit activities under sections 22-6 through 22-18. Section 22-19 encompasses not only the traditional concept of charitable organizations—those aiding the poor or disadvantaged, for example, or working to overcome traditionally recognized evils such as disease—but organizations such as CBE holds itself out to be, which serve an information gathering and dissemination function and routinely work to promote legislation or other government action. The Village admits that "public interest" groups could come within the purview of section 22-19. In such an organization paid solicitors often also perform the functions of information dissemination, discussion, and advocacy of public issues. In addition, where the cause is an unpopular one, the salaries paid to solicitors may have to be relatively high to compensate for the increased unpleasantness resulting from public reaction and to ensure that the needed solicitation effort does indeed occur. Certainly other paid members of the organization work to ob-

6. The Village alleges that CBE, at least, can apply for a permit under the for-profit provisions. It is not clear that CBE would come within the definition of section 22-6, and we note that organizations *purporting* to be charitable come under section 22-19. More importantly, however, as we have already stated, we are concerned here not with the particular characteristics of CBE but instead with the impact of section 22-20(g) on organizations of the type CBE purports to be.

tain and compile relevant information and promote the organization's position on its target issues. The district court recognized the functional distinction between traditional charitable organizations and those more oriented toward advocacy.

Mr. Justice Brennan, concurring in *Hynes*, noted the importance of canvassing in the areas of political campaigns and public matters, citing particularly the importance of discussion of sensitive and controversial issues. 425 U. S. at 625, 96 S. Ct. at 1763. Although Mr. Justice Brennan recognized the need for more regulation where solicitation of funds is also involved, he was speaking in the context of an ordinance requiring identification; we conclude that the greater regulation he recognized was neither absolute prohibition nor an unnecessary additional burden. But in essence these are the consequences organizations which combine solicitation with their other activities must face.[7]

We do not decide the reasonableness of the 75 percent requirement as applied to solicitation by the more traditional charitable organizations. However, for the reasons stated below, the requirement is on its face unreasonable when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization.

The Village has a legitimate interest in protecting its citizens from fraud by solicitors who will use the funds collected for purposes other than those expressly or impliedly represented. It has a similar protection interest in identifying organizations

7. This court has also recognized the evils of absolute prohibition of canvassing for funds by "a non-profit group that expresses essentially political ideas." In a *per curiam* opinion reversing the denial of a preliminary injunction sought by CBE in *Citizens for a Better Environment* v. *City of Park Ridge*, No. 75-1587, ... F. 2d ..... (7th Cir. 1975), the court condemned, in spite of the legitimate municipal interest in guarding the privacy of citizens and protecting them from fraud, a blanket prohibition on charitable solicitations except upon the request or invitation of residential owners or occupants. The court's characterization of CBE in that decision does not, of course, bind the Village here.

where the salaries paid are so large in relation to the services provided that the organization is actually a for-profit venture. The 75 percent requirement *might* be valid where solicitors represent themselves as mere conduits for contributions. But the requirement as it exists in the Village code also applies where it is made clear that the contributions will be used for reasonable salaries of those who will gather and disseminate information relevant to the organization's purpose. Thus the standard is not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The freedom of expression of organizations which do not present these problems is also infringed, either by absolute prohibition or the additional burden of the for-profit permit requirements.

In *Schneider* the Supreme Court stated that although abridgment of First Amendment freedoms may be an efficient and convenient means to prevent fraud and trespass, these considerations cannot justify such abridgment. See also Justice Brennan's concurrence in *Hynes*, quoting *Thomas* v. *Collins*, 323 U. S. 516, 530, 65 S. Ct. 315, 323, 89 L. Ed. 440 (1945):

> "[I]n the area of First Amendment protections, '[t]he rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. . . . Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending.' "

425 U. S. at 628, 96 S. Ct. at 1764. Section 22-20(g) does not meet this standard.

Our conclusion is not inconsistent with the Fifth Circuit's decision in *Nat'l Foundation* v. *City of Ft. Worth*, 415 F. 2d 41 (5th Cir. 1969), *cert. denied*, 396 U. S. 1040 (1970). That decision upheld an ordinance which limited the cost of solicitation of charitable contributions to 20 percent of total receipts. However, the ordinance also allowed an organization which did

not meet the requirement to show that its percentage was not unreasonable. The court recognized that within the broad class of charitable organizations a rigid percentage requirement would be difficult to justify, stating:

> "A fixed percentage limitation on the costs of solicitation might be undesirable and inapplicable if applied to all types of charitable organizations. What may be proper in one situation may not be so in other situations. The ordinance before us does not imply a fixed standard but permits a determination of reasonableness of the ratio between the cost of solicitation and the amount collected."

Section 22-20(g) provides no similar flexibility.

Accordingly, the decision of the district court is affirmed.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B—OPINION OF UNITED STATES DISTRICT COURT.

IN THE UNITED STATES DISTRICT COURT
* * (Caption—76 C 470) * *

FINAL JUDGMENT.

The Plaintiffs in this action are the Citizens for a Better Environment (CBE), an Illinois not-for-profit corporation, and a certain named employee of the organization. CBE's major source of financial support consists of small contributions from individual citizens. CBE wishes to conduct a door-to-door fund-raising canvass in the defendant village, Schaumburg, Illinois. In Count I, the Plaintiffs contend that the Village of Schaumburg's refusal to allow a CBE canvass deprives them of their rights guaranteed by the first and fourteenth amendments to the United States Constitution. Counts II and III of the Complaint charge that Village of Schaumburg's solicitation ordinance violates the first and fourteenth amendments. Count II challenges the Ordinance as enacted by the Village of Schaumburg, and Count III challenges its subsequent codification.

CBE seeks: (1) judgment declaring the ordinance void and an injunction prohibiting its enforcement; and (2) judgment declaring the Village Board's action void and an injunction prohibiting further interference with the Plaintiffs' right to canvass Schaumburg. CBE now moves for summary judgment. This motion is now ready for decision on the pleadings, exhibits, and memoranda submitted by the parties.

The Schaumburg ordinance regulates charitable solicitation. All prospective solicitors must first procure a charitable solicitation permit from the Village. The applicant must submit information, including the name of the organization and the name

under which it intends to solicit contributions, the name and address of the person in charge of solicitation in the Village, the names and addresses of all persons who will solicit contributions in the Village, the dates and times of day such solicitations are to be made, and the geographic area within the Village wherein such solicitation shall be conducted at a particular time and day, a written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," satisfactory proof that the organization is a tax-exempt organization under the Internal Revenue Code of the United States, § 501(c)(3), and satisfactory proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization.

Chapter 22, § 20(g), of the Schaumburg Village Code states the following:

> (g) Satisfactory proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
>
> (1) Salaries or commissions paid to solicitors;
>
> (2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.
>
> For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

CBE's main concern is with this particular requirement.

Through the years, the United States Supreme Court has enunciated definitive guidelines for application when the government's right to regulate clashes with first-amendment freedoms. Plainly, the government may regulate solicitation in order to protect the community from fraud. A city may, for example, require the solicitor to appear and establish his identity and authority to act in behalf of the cause he represents. *Cantwell* v. *Connecticut*, 310 U. S. 296, 306 (1940). Any action impinging upon the freedom of expression and discussion, however, must be minimal, and intimately related to an articulated, substantial governmental interest. As noted in *NAACP* v. *Button*, 371 U. S. 415, 438 (1963), "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." In a long line of cases the Court has consistently invalidated statutes and ordinances that permit a public official to exercise broad discretion in granting or denying the right to engage in constitutionally protected activities; e.g., *NAACP* v. *Button, supra; Staub* v. *City of Baxley*, 355 U. S. 313 (1958); *Martin* v. *City of Struthers*, 319 U. S. 141 (1943); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Schneider* v. *State*, 308 U. S. 147 (1939).

In this Court's decision of February 25, 1977, in this case entered regarding the Village of Palatine, this Court stated:

> . . . Also constitutionally impermissible, is the provision of the ordinance requiring the applicant to supply "such additional information as the Chief of Police" of the Village of Palatine requests.
>
> This provision authorizes the Chief of Police in his discretion to solicit information about an organization's views and practices, and to deny a permit on the basis of his evaluation of those views and practices.
>
> In fact, this appears to be what happened. Exhibit 4 of the Hoellwarth affidavit is a letter from the Village Board denying plaintiffs the right to solicit because in the Board's view, the majority of plaintiffs contribution do not make their way to plaintiffs' chartered function. This is a form of censorship prohibited by the Supreme Court.

The Schaumburg requirement that 75% of the proceeds of a solicitation will be used directly for the charitable purpose of the organization before a permit will be issued is also constitutionally impermissible.

It does not make any difference that in the case a similar requirement was codified by the Village Board of Schaumburg instead of imposed by the Chief of Police.

The Village of Schaumburg's soliciting ordinance mandates the issuance of a permit to any person or group that can meet its requirements. CBE was apparently denied the right to solicit in the Village of Schaumburg only because it did not comply with this requirement in § 20(g) since CBE is able and willing to comply with the other requirements and does not challenge them at this time.

The Plaintiffs' Motion for Summary Judgment on Counts II and III is granted insofar as Section 20(g) of Chapter 22 of the Village of Schaumburg Code and § 3(g) of Village of Schaumburg ordinance entitled "An Ordinance Regulating Soliciting by Charitable Organizations" and numbered 1052 are declared unconstitutional and void on their face, and their enforcement against CBE is hereby enjoined.

The Plaintiff's Motion for Summary Judgment on Count I is granted. The action of the Village of Schaumburg denying CBE permission to canvass and solicit funds in the Village is declared in violation of the constitutional rights of CBE. The Village of Schaumburg is enjoined from further prohibition of the CBE. canvass and solicitation of funds and is ordered to issue a permit to canvass and solicit funds to CBE forthwith.

Enter:

/s/ Prentice H. Marshall

Judge

Dated: February 17, 1978.

APPENDIX C—AMENDMENTS TO UNITED STATES CONSTITUTION.

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT [I.]

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

SCHAUMBURG VILLAGE CODE, CHAPTER 22, ARTICLE III.

Article III. Charitable Organizations.

For state law as to solicitation of funds for charitable purposes, see Ill. Rev. Stat., ch. 23, § 5101 et seq.

Sec. 22-19. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

Charitable organization. Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or

corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Contribution. The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature. (Ord. No. 1052, § 2.)

Sec. 22-20. Permits—Required; contents of application.

Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The name and address of the person in charge of solicitation in the village.

(c) The names and addresses of all the persons who will solicit contributions in the village.

(d) The dates and times of day such solicitations are to be made and the geographic area within the village wherein such solicitation shall be conducted at a particular time and day.

(e) A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

(f) Satisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).

(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

Sec. 22-21. Same—Submission and verification of applications; issuance.

All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place. (Ord. No. 1052, § 7.)

Sec. 22-22. Same—Fee.

Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of ten dollars. (Ord. No. 1052, § 6.)

Sec. 22-23. Indicted or convicted felons as solicitors.

It shall be unlawful for any charitable organization to utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony. (Ord. No. 1052, § 5.)

Sec. 22-24. Hours; entering premises posted for "no soliciting."

No permit issued under the provisions of this article shall permit solicitation before the hour of 9:00 A.M. and after the hour of 6:00 P.M., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "no solicitors or peddlers invited." (Ord. No. 1052, § 4.)

Supreme Court, U. S.
FILED
JUN 6 1979
MICHAEL RODAK, JR., CLERK

APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978.

No. 78-1335

CITIZENS FOR A BETTER ENVIRONMENT, AN ILLINOIS NOT FOR PROFIT CORPORATION, ET AL.,

Respondents,

vs.

VILLAGE OF SCHAUMBURG, ET AL.,

Petitioners.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

IN THE

Supreme Court of the United States

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** The Opinion of the Court of Appeals is included as Appendix A, pp. A1 through A12 of the Appendix to the Petition for Writ of Certiorari. The opinion is also reported at 590 F. 2d 220 (1978).

APPENDIX.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division, No. 76 C 470

RELEVANT DOCKET ENTRIES.

Filed Complaint ..... February 10, 1976

Filed Plaintiff's motion for summary judgment and affidavit of Larry Hoellwarth with exhibits attached..... February 20, 1976

Filed Defendants, Village of Schaumburg, Martin J. Conroy, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers and Edward Olsen's Answer to Complaint for Declaratory Judgment and Injunction ..... March 4, 1976

Filed Appearance of Defendants, Village of Schaumburg, et al., with that of Jack M. Siegel as attorney ..... March 16, 1976

Order dater 2-25-77: Ordered that the complaint against Village of Willow Springs, Illinois be dismissed by agreement, as all matters in controversy herein have been settled. (Draft) Ordered that Village of Lisle, Village of Tinley Park, and the Village of Calumet Park are dismissed from the above cause by agreement. Further Ordered that Plaintiff's motions for summary judgment is granted as against the following defendants: Village of Palatine, IL, City of Harvey, IL,

Village of Elmwood Park, IL, Village of Glen Ellyn, IL (Draft) ..... March 1, 1977

By agreement of parties, complaint against City of North Chicago and Village of Alsip is dismissed ..... March 1, 1977

Clerk's file copy of transcript of proceedings had before the Honorable Prentice H. Marshall on December 13, 1976, filed by official court reporter..... March 10, 1977

Order dated 3-25-77: Ordered pursuant to rule 54(b) Plaintiff's motion for summary judgment is granted against defendant Village of Villa Park, IL., (Draft).. March 29, 1977

Order of June 10, 1977: Plaintiff granted leave to file amended complaint as to Village of Schaumburg ..... June 13, 1977

Filed Motion for summary judgment..... December 7, 1977

Filed Amended Complaint for Declaratory Judgment and Injunction ..... December 7, 1977

Order of December 7, 1977 granting Plaintiffs' motion to amend complaint; defendants to answer within 15 days.... December 8, 1977

Filed answer to Amended Complaint for Declaratory Judgment and Injunction.. December 12, 1977

Filed Defendants' Answer to Motion for Summary Judgment ..... December 15, 1977

Filed Affidavit attached to Plaintiff's reply memorandum of law in support of motion for summary judgment ..... December 23, 1977

Order of January 23, 1978 directing plaintiffs to prepare draft order..... January 23, 1978

Clerk's File Copy Transcript of Proceedings held January 23, 1978 before Judge Marshall filed by Official Court Reporter February 15, 1978

Enter Order dated February 17, 1978; enter Final Judgment; granting plaintiffs' motion for summary judgment (draft); enter Rule 58 judgment ..... February 22, 1978

Filed Notice of Appeal of defendant, Village of Schaumburg, from the order dated February 17, 1978 ..... March 9, 1978

Designated Portions of Record of Appeal. March 14, 1978

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 78-1384

Heard and taken under advisement..... September 18, 1978

Filed Opinion by Judge Fairchild..... December 1, 1978

Final Judgment Order affirmed with costs December 1, 1978

Filed notice of filing petition for certiorari from Supreme Court on February 28, 1979, Supreme Court No. 78-1335.... March 6, 1979

Mandate issued and record returned..... March 22, 1979

Filed Receipt for Mandate and record for District Court ..... March 28, 1979

UNITED STATES DISTRICT COURT

For the Northern District of Illinois

Eastern Division

CITIZENS FOR A BETTER ENVIRONMENT, AN ILLINOIS NOT-FOR-PROFIT CORPORATION, LARRY A. HOELLWARTH,

Plaintiffs,

vs.

VILLAGE OF SCHAUMBURG, ILLINOIS, MARTIN J. CONROY, HERBERT AIGNER, AL LARSON, NELS HORNSTROM, RAYMOND LEBEAU, JAMES ROGERS AND EDWARD OLSEN,

Defendants.

No. 76 C 470

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Now comes the Plaintiffs, Citizens for a Better Environment, an Illinois Not-for-Profit Corporation, and Larry A. Hoellwarth, by their Attorney, Michael R. Berman, and complaining of the Defendants, Village of Schaumburg, Illinois, Martin J. Conroy, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen.

JURISDICTION

1. Jurisdiction of this Court is invoked under Section 1 of the Fourteenth Amendment to the Constitution of the United States, Title 28, United States Code, Sections 1331, 1343(3) and 1651, and Title 42 United States Code, Sections 1983 and 1988.

2. The amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs.

PARTIES

3. The Plaintiff, Citizens for a Better Environment (herein referred to as "CBE") is an Illinois Not-for-Profit Corporation with its principal place of business in the City of Chicago, County of Cook and State of Illinois. It was organized for the purpose, among others, of protecting, maintaining, and enhancing the quality of the Illinois environment. It is registered and in good standing with the Illinois Attorney General's Charitable Trust Division and has been afforded tax-exempt (as well as tax-deductible) status by the United States Internal Revenue Service. That incident to its purpose, CBE employs "canvassers" who are engaged in door-to-door activity in the Chicago metropolitan area, endeavoring to distribute literature on environmental topics and answer questions of an environmental nature when posed; solicit contributions to financially support the organization and its program; receive grievances and complaints of an environmental nature regarding which CBE may afford assistance in the evaluation and redress of these grievances and complaints. This canvassing procedure is also an effective means of making the public aware of CBE as a source of assistance in the event that problems of an environmental nature arise in the future.

4. That the Plaintiff, Larry A. Hoellwarth, is an employee of CBE, and he devotes his full time to those duties. He is compencated in the form of wages for such service, which he depends upon for his livelihood. His duties include the direct responsibility for the canvassing operations of CBE, and his reputation depends, at least in part, upon the success of these canvassing operations.

5. That the Defendant, Village of Schaumburg, Illinois, is a Corporation, duly created pursuant to Illinois law.

6. That the Defendants, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen (hereinafter referred to as "The Schaumburg Village Board"),

are the duly elected trustees of the Village of Schaumburg, Illinois.

7. That the Defendant, Martin J. Conroy, is the duly appointed Chief of Police for the Village of Schaumburg, Illinois.

Count I

FACTS

8. That the Defendants, Village of Schaumburg, Illinois, has enacted a solicitation ordinance on March 12, 1974, No. 1052, attached as Exhibit A, and made a part hereof, that requires nonprofit organizations to submit a written application to the Village Clerk in order to receive a permit.

9. That this ordinance was issued to CBE on November 15, 1977, by the Village Clerk's Office with the instruction that this is the ordinance under which nonprofit organizations must register.

10. That the defendants filed with their answer a section of the village code of Schaumburg, Chapter 22, §§ 22-1—22-24, attached as Exhibit B and made a part hereof, which defendants stated is in full force and effect.

11. That Chapter 22 of the Schaumburg code consists of Ordinance 1103 which was attached to CBE's original complaint and ordinance 1052 which was referred to in CBE's original complaint, and the only differences between the ordinances and their codification are insignificant.

12. That under ordinance 1052 and/or the code, Chapter 22, §§ 22-1—22-24, a charitable organization must apply to the village clerk for a permit before it is allowed to solicit contributions door-to-door.

13. That the Village Board issues the permit if all requirements of the ordinance and/or the code have been met.

14. That CBE has been requesting permission to canvass from the Village of Schaumburg since April 1973.

15. That Schaumburg received a final request for solicitation dated January 22, 1976.

16. That all requests have been denied.

17. That notwithstanding the said registration ordinance and the Village code, the Schaumburg Village Board, acting without legal authority, has arbitrarily and capriciously denied Plaintiffs' application for a permit.

18. Plaintiffs have applied for such permits although they have not and do not admit the validity of requiring permits for the operations of a charitable organization nor for the exercise of the constitutionally protected freedoms, privileges and immunities.

19. That such refusal by Schaumburg was without good cause shown and without affording Plaintiffs herein a hearing thereon.

20. That each ordinance, and specifically Section Three of Ordinance 1052 and Section 22-20 of Chapter 22 are so strict, odious and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization"—as to be in violation of Plaintiffs' constitutional rights.

21. That on information and belief the Schaumburg Village Board does not uniformly enforce the 75% test and has granted permits to other charities who have failed to meet the test.

22. That on information and belief, other charitable organizations are not made to submit the unreasonable information demanded by the ordinance and/or the code, and therefore Plaintiffs' rights to equal protection of the laws and to due process have been violated.

23. That by reason of such refusal, Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, Illinois, should Plaintiffs seek to exercise their rights to canvass.

24. That by reason of their official positions, said Defendants, and each of them were cloaked with authority over Plaintiffs herein and under which authority, performed all of the acts or omissions herein alleged.

25. That at all times heretofore alleged, the Defendants, and each of them were acting pursuant to codes, statutes, regulations, ordinances, customs and usages of the State of Illinois, their respective municipalities, and under Color of Law.

26. That by reason of the acts or omissions of the Defendants as aforesaid alleged, the Plaintiffs were and are further being subjected to a deprivation of their right to free speech, to freedom of association, and to access to the Courts, thus depriving them of equal protection of the Laws and further depriving them of life, liberty and property without due process of Law, and further depriving individual Plaintiffs of rights, privileges and immunities, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

27. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful acts of the Defendants unless relief issues from this Court.

28. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court enter a declaratory judgment declaring the action of the Trustees of the Village of Schaumburg, Illinois, denying CBE's request to conduct a solicitation drive in the Village of Schaumburg, Illinois, to be without authority, illegal, void, and in violation of Plaintiffs' rights.

B. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them prohibiting the harassment of the Plaintiffs and their solicitors during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

C. That this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional and that the Defendants, and each of them, be permanently enjoined from such enforcement.

D. That such injunction issue without bond for good cause shown.

E. For such other and further relief as this Court deems just and reasonable under the circumstances.

Count II

29. Plaintiffs reallege Paragraphs Eight (8) and Nine (9) of Count I.

30. That ordinance no. 1052, enacted on March 12, 1974, attached as Exhibit A and made a part hereof, purports to prohibit the seeking to obtain donations of money by a person without first having obtained a permit issued at the arbitrary discretion of the Schaumburg Village Board.

31. That said ordinance, and specifically Section Three thereof, is so strict, odious, and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at lease seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purpose of the organization"—as to be in violation of Plaintiffs' constitutional rights.

32. That such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and right to access to the courts as guaranteed them by the First Amendment to the Constitution of the United States and as applied by the Fourteenth Amendment to the Constitution of the United States.

33. That the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg should Plaintiffs seek to exercise their right to canvass.

34. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful ordinance unless relief issue from the Court.

35. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them, prohibiting the harassment of Plaintiffs and their solicitors during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

B. That this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional, and that the Defendants, and each of them, be permanently enjoined from such enforcement.

C. That such injunction issue without bond for good cause shown.

D. For such other and further relief as this Court deems just.

Count III

36. Plaintiffs reallege Paragraph Ten (10) of Count I.

37. That Chapter 22, §§ 22-1—22-24, of its Village Code attached as Exhibit B and made a part hereof, purports to prohibit the seeking to obtain donations of money by a person without first having obtained a permit issued at the arbitrary discretion of the Schaumburg Village Board.

38. That said ordinance, and specifically Section Three thereof, is so strict, odious, and vague in requiring unreasonable

information and criteria—including "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purpose of the organization"—as to be in violation of Plaintiffs' constitutional rights.

39. That such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts as guaranteed them by the First Amendment to the Constitution of the United States and as applied by the Fourteenth Amendment to the Constitution of the United States.

40. That the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg should Plaintiffs seek to exercise their right to canvass.

41. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful ordinance unless relief issue from the Court.

42. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them, prohibiting the harassment of Plaintiffs and their solicitors during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

B. That this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional, and that the Defendants, and each of them, be permanently enjoined from such enforcement.

C. That such injunction issue without bond for good cause shown.

D. For such other and further relief as this Court deems just.

CITIZENS FOR A BETTER ENVIRONMENT
By: /s/ MICHAEL R. BERMAN
Michael R. Berman
Its Attorney

Michael R. Berman, Esq.
59 East Van Buren, Suite 2610
Chicago, Illinois 60605
(312) 939-1530

Dated: December 2, 1977

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

LARRY A. HOELLWARTH, being first duly sworn on oath, deposes and says that he has read the above and foregoing Complaint and that the same is true in substance and in fact.

/s/ LARRY A. HOELLWARTH
Affiant

Subscribed and sworn to before me this 2nd day of December 1977.

/s/ MIME BARR
Notary Public

Exhibit A

ORDINANCE NO. 1052
AN ORDINANCE REGULATING SOLICITING BY CHARITABLE ORGANIZATIONS

Be it Ordained by the President and Board of Trustees of the Village of Schaumburg:

SECTION ONE: It shall be unlawful for any person, organization, firm or corporation to solicit contributions to a purported charitable organization without first complying with the requirements of this ordinance and obtaining a permit from the Village Board.

SECTION TWO: For the purpose of this ordinance, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

a. *Charitable Organization.* Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

b. *Contribution.* The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature.

c. *Charitable Purpose.* Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

SECTION THREE: Every charitable organization, which solicits or intends to solicit contributions from persons in the Village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the Village Clerk and shall include the following information:

a. The name of the organization and the name under which it intends to solicit contributions.

b. The name and address of the person in charge of solicitation in the Village.

c. The names and addresses of all the persons who will solicit contributions in the Village.

d. The dates and times of day such solicitations are to be made and the geographic area within the Village wherein such solicitation shall be conducted at a particular time and day.

e. A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, Chapter 23, Section 5101, and such statute as it may hereafter be amended.

f. Satisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, Section 501(c)(3).

g. Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph g., the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five percent of the funds collected are utilized directly and solely for the charitable purpose of the organization.

SECTION FOUR: No permit issued under the provisions of this ordinance shall permit solicitation before the hour of 9:00 a.m. and after the hour of 6:00 p.m., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "No Solicitors Allowed" or words of similar import.

SECTION FIVE: It shall be unlawful for any charitable organization to utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony.

SECTION SIX: Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of Ten Dollars ($10.00).

SECTION SEVEN: All applications shall be submitted to the Village Clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the Village Clerk to the Village Board. If the Village Board shall find and determine that all requirements of this ordinance have been met, a permit shall be issued specifying the dates and times at which solicitation may take place.

SECTION EIGHT: Any person, firm or corporation violating the provisions of this ordinance shall be fined not more than Five Hundred Dollars ($500.00) for each such offense.

SECTION NINE: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

Ayes: Trustees Guthrie, Kessell, Aigner, LeBeau.

Nays: None.

Passed and Approved this 12th day of March, 1974.

/s/ ROBERT O. ATCHER
Village President

Attest: /s/ SANDY CARSELLO
Village Clerk.

Exhibit B

Peddlers and Solicitors

CHAPTER 22.

PEDDLERS AND SOLICITORS.

For state law as to transient merchants generally, see Ill. Rev. Stat., ch. 121½, §§ 158 to 165. As to itinerant merchants by vehicle, see Ill. Rev. Stat., ch. 121½, §§ 165.1 to 165.17.

As to citations in lieu of complaint for certain offenses, see §§ 12-2 to 12-5 of this Code. As to licenses generally, see ch. 17. As to use of noise devices on vending vehicles, see § 18-4. As to noises generally, see § 20-41. As to weights and measures generally, see ch. 32.

Article I. In General.

§§ 22-1 to 22-5. Reserved.

Article II. For Profit Peddlers and Solicitors.

§ 22-6. Definitions.
§ 22-7. Licenses—Required.
§ 22-8. Same—Applications; disposition of fee if license refused on moral grounds; registration book.
§ 22-9. Same—Investigation and certification of applicant.
§ 22-10. Same—Fees.
§ 22-11. Same—Revocation.
§ 22-12. Fraud; sale of goods, etc., not covered by license.
§ 22-13. Hours of operation.
§ 22-14. Limitations on parking.
§ 22-15. Notices of refusal of invitation.
§ 22-16. Conduct.
§ 22-17. Erection of signs at village limits.
§ 22-18. Penalties.

Article III. Charitable Organizations.

§ 22-19. Definitions.
§ 22-20. Permits—Required; contents of application.
§ 22-21. Same—Submission and verification of applications; issuance.
§ 22-22. Same—Fee.
§ 22-23. Indicted or convicted felons or solicitors.
§ 22-24. Hours; entering premises posted for "no soliciting."

Article I. In General.

Secs. 22-1 to 22-5. Reserved for future legislation.

Article II. For Profit Peddlers and Solicitors.

Sec. 22-6. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Peddler. Any person who, going from place to place, shall at retail sell, offer for sale, sell and deliver, barter or exchange any goods, wares, merchandise, wood, oil, fish, fruits, vegetables, country produce or any other article or thing whatsoever or any service from a vehicle or otherwise. It shall not include a serviceman who, responding to a prior call, sells replacement merchandise.

Solicitor. Any person who, going from place to place, without prior appointment or pre-arrangement with the customer, shall take orders for future delivery at retail of any merchandise or other article or thing, or any service. (Ord. No. 1103, § 1.)

Sec. 22-7. Licenses—Required.

No person shall engage in the business of a peddler or solicitor within the village without first having obtained a license therefor as provided in this article. (Ord. No. 1103, § 2.)

Sec. 22-8. Same—Applications; disposition of fee if license refused on moral grounds; registration book.

An application for a peddler's or solicitor's license shall be made to the village collector in conformity with the general requirements of this Code and other village ordinances relating to applications for licenses. Such applications shall also set forth the number of vehicles, if any, intended to be operated, the kind of merchandise to be peddled or offered for order, the permanent address of the applicant, the name of the partnership, corporation or proprietorship for whom the applicant works, the name of the supervisor of the applicant, the telephone number of the parent firm, and cities of previous solicitation; and further, whether such applicant has ever had a revocation of any peddler's or solicitor's licenses, whether he has ever been convicted for a violation of similar peddlers and solicitors ordinances, whether he has ever been arrested or convicted of a misdemeanor or felony, and if so, why. Each application shall be accompanied by the annual fee as hereinafter prescribed. Should the application be refused because the applicant upon investigation is not found to be a person of good and moral character and reputation, as based on answers given on the license application, the license fee shall be deemed to have covered the cost of investigation and shall not be returned to the applicant. The applicant shall register in a book provided for such purpose in the office of the village collector. (Ord. No. 1103, § 3.)

Sec. 22-9. Same—Investigation and certification of applicant.

The chief of police shall, upon request from the village collector, make or cause to be made an investigation to determine the character and reputation of the applicant. No license shall be issued to any applicant who is not found to be a person of good character and reputation or to any firm, corporation, partnership or association which is not represented in the village by a person found to be of good character and reputation. The chief of police shall certify to the village collector the issuance or

denial of a permit under the provisions of this article within thirty days of the application. (Ord. No. 1103, § 4.)

Sec. 22-10. Same—Fees.

The annual fee for a peddler's or solicitor's license shall be ten dollars; except, that if a peddler or solicitor uses a vehicle other than a private automobile in his business, the annual fee shall be twenty-five dollars per vehicle. (Ord. No. 1103, § 5.)

Sec. 22-11. Same—Revocation.

Any such license may be revoked by the village manager because of any violation of this article or for any other provision of this Code or other ordinances of the village or of any state or federal law or whenever the registrant shall cease to possess the qualifications and character required in this article for the original registration. (Ord. No. 1103, § 12.)

Sec. 22-12. Fraud; sale of goods, etc., not covered by license.

It shall be unlawful for any peddler or solicitor to cheat, deceive or fraudulently misrepresent, whether through himself or through an employee, while acting as a peddler or solicitor in the village or to barter, sell or peddle any goods, merchandise or wares other than those specified in his application for a license. (Ord. No. 1103, § 6.)

Sec. 22-13. Hours of operation.

No soliciting or peddling shall be permitted before the hour of 9:00 A.M. or after the hour of 6:00 P.M. within the village, and no peddling or soliciting shall be conducted on Sundays; provided, that vending of food from trucks on the public ways shall be on all days between sunup and sunset. (Ord. No. 1103, § 7.)

Sec. 22-14. Limitations on parking.

No peddler or solicitor may park on public property in a given place for longer than fifteen minutes after the time of his sale or

solicitation of an order at that place, and after the expiration of such fifteen minutes, he shall move on to a different location which is at least one village block away. (Ord. No. 1103, § 8.)

Sec. 22-15. Notices of refusal of invitation.

Notice of the determination of the occupant's refusal of invitation to any solicitors or peddlers shall be given in the following manner:

A weatherproof card, at least three inches by four inches in size, shall be exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

"NO SOLICITORS OR PEDDLERS INVITED."

The letters shall be at least one-third inch in height. For the purpose of uniformity, the cards shall be provided by the village collector to persons requesting, at the cost thereof.

Such card so exhibited shall constitute sufficient notice to any solicitor or peddler of the determination of the occupant of the residence of the information contained thereon. (Ord. No. 1103, § 9.)

Sec. 22-16. Conduct.

It shall be the duty of every solicitor or peddler, upon going onto any premises in the village upon which a residence as herein defined is located, to first examine the notice provided for in this article, if any is attached, and be governed by the statement contained on the notice. If the notice states "no solicitors or peddlers invited," then the solicitor or peddler, whether registered or not, shall immediately and peacefully depart from the premises.

Any solicitor or peddler who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant. (Ord. No. 1103, § 10.)

Sec. 22-17. Erection of signs at village limits.

The director of public works is hereby directed to post appropriate signs at the limits of the village with the following language:

"SOLICITORS AND PEDDLERS MUST BE LICENSED AND REGISTERED. APPLY AT SCHAUMBURG MUNICIPAL BUILDING, 101 SCHAUMBURG COURT."

Sec. 22-18. Penalties.

Any person violating the provisions of this article shall be fined not more than five hundred dollars for each such offense. (Ord. No. 1103, § 13.)

Article III. Charitable Organizations.

For state law as to solicitation of funds for charitable purposes, see Ill. Rev. Stat., ch. 23, § 5101 et seq.

Sec. 22-19. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

Charitable organization. Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Contribution. The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature. (Ord. No. 1052, § 2.)

Sec. 22-20. Permits—Required; contents of application.

Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door

solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The name and address of the person in charge of solicitation in the village.

(c) The names and addresses of all the persons who will solicit contributions in the village.

(d) The dates and times of day such solicitations are to be made and the geographic area within the village wherein such solicitation shall be conducted at a particular time and day.

(e) A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

(f) Satisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).

(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1952, § 3.)

Sec. 22-21. Same—Submission and verification of applications; issuance.

All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place. (Ord. No. 1952, § 7.)

Sec. 22-22. Same—Fee.

Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of ten dollars. (Ord. No. 1052, § 6.)

Sec. 22-23. Indicted or convicted felons as solicitors.

It shall be unlawful for any charitable organization to utilize as a solicitor any person who as been convicted of a felony or is presently under indictment for a felony. (Ord. No. 1052, § 5.)

Sec. 22-24. Hours; entering premises posted for "no soliciting."

No permit issued under the provisions of this article shall permit solicitation before the hour of 9:00 A.M. and after the hour of 6:00 P.M., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "no solicitors or peddlers invited." (Ord. No. 1052, § 4.)

I, MICHAEL R. BERMAN, certify that I served copy of the foregoing Motion and Amended Complaint to Siegel, Stonesifer & Jentsch, Ltd., 39 South LaSalle, Room 919, Chicago, Illinois 60603, by depositing the copy in the U. S. mail at 59 East Van Buren Street, Chicago, Illinois, with proper postage affixed.

/s/ MICHAEL R. BERMAN
Michael R. Berman

Dated: December 2, 1977

MICHAEL R. BERMAN, ESQ.
59 East Van Buren, Suite 2610
Chicago, Illinois 60605
(321) 939-1530

UNITED STATES DISTRICT COURT

* * (Caption—76 C 470) * *

ANSWER TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Now comes the Defendants, Village of Schaumburg, Martin J. Conroy, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond LeBeau, James Rogers, and Edward Olsen, Defendants herein by Jack M. Siegel, their attorney, and in answer to the Amended Complaint for Declaratory Judgment and Injunction heretofore filed herein, say as follows:

JURISDICTION

1. In answer to paragraph 1 Defendants deny that this Court has jurisdiction under Section 1 of the Fourteenth Amendment to the Constitution of the United States, Title 28, United States Code, Sections 1331, 1343(3) and 1651, and Title 42 United States Code, Sections 1983 and 1988. Defendants further aver that there are no substantial federal questions involved herein and that there is no violation of the Fourteenth Amendment or any of the statutes enumerated in paragraph 1 by virtue of the ordinances of the Village of Schaumburg or the acts of the Defendants here.

2. Defendants deny that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs and aver that there are no allegations in said Amended Complaint to support said allegation of jurisdiction.

PARTIES

3. In answer to paragraph 3 the Defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and further aver that the facts

alleged in said paragraph 3 even if true, would not be relevant or material to the issues in this case with the exception that the Defendants state on information and belief that the CBE employs "canvassers" who solicit funds for the purported purposes of the organization.

4. In answer to paragraph 4 of said Amended Complaint Defendants say that they have no knowledge sufficient to form a belief as to the truth of said allegations and neither admit nor deny said allegations but demand strict proof thereof.

5. In answer to paragraph 5 Defendants admit that the Village of Schaumburg is a municipal corporation and further avers that it is a home-rule municipality under the Constitution of the State of Illinois.

6. In answer to paragraph 6 Defendants admit that Herbert Aigner, Al Larson, Raymond Lebeau and Edward Olsen are members of the Board of Trustees of the Village of Schaumburg. Defendants aver that James Rogers and Nels Hornstrom are no longer members of the Board of Trustees of said Village.

7. Defendants admit the allegations of paragraph 7 of said Amended Complaint.

Count I

FACTS

8. In answer to paragraph 8 Defendants admit that the Village enacted Ordinance No. 1052 on March 12, 1974, but aver that said Ordinance has now been codified as part of the Schaumburg Village Code, adopted in 1975. Defendants aver that said Ordinance speaks for itself and requires a permit application to be made to the Village Clerk.

9. In answer to paragraph 9 Defendants say that they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but say that said allegations are irrelevant and immaterial for the reason that as appears on the face of said

Complaint no demand or application for permit was made on or after November 15, 1977.

10. In answer to paragraph 10 Defendants admit that Section 22-1-22-24 regulate peddlers and solicitors in the Village of Schaumburg, but aver that the Plaintiff herein purports to be a charitable organization and is therefore subject to the provisions of Section 22-19 through Section 22-24 of the Schaumburg Village Code.

11. In answer to paragraph 11 of said Amended Complaint Defendants admit that present Chapter 22 of the Schaumburg Village Code consists of former Ordinance 1103 and former Ordinance 1052, but aver that Ordinance 1103 which was attached to CBE's original complaint does not purport to regulate a charitable organizations or organizations of the character of CBE.

12. Defendants admit the allegations of paragraph 12.

13. Defendants admit the allegations of paragraph 13.

14. In answer to paragraph 14 Defendants say that the CBE has heretofore requested permission to canvass in the Village of Schaumburg, but deny said request has persisted since April of 1973.

15. In answer to paragraph 15 Defendants say that they are unable to answer with certainty whether a final request for solicitation was dated January 22, 1976.

16. In answer to paragraph 16 Defendants admit that any requests have been denied, but aver that the Plaintiff, CBE has been informed of the requirements of the Ordinance and ask to submit documentation in support of their application in accordance with the Ordinance.

17. In answer to paragraph 17 Defendants deny that the Schaumburg Village Board has acted without legal authority or is arbitrarily and capriciously denied the Plaintiff's application for permit. Defendants say that the Village stands ready to issue a permit if the Plaintiff or any other applicant meets the requirements of the Village Code and avers that the acts of the Village Board have been in accordance with law and have not been arbitrary or capricious.

18. In answer to paragraph 18 Defendants aver that if Plaintiffs apply for such permits and meet the requirements of said Ordinances of the Village of Schaumburg, permits will be granted.

19. In answer to paragraph 19 Defendants deny that the refusal by the Village of Schaumburg was without good cause shown and aver that good cause was the failure to comply with valid Ordinances of the Village of Schaumburg. Defendants further aver that no hearing was ever requested and that no hearing is required under the Ordinances of the Village of Schaumburg.

20. In answer to paragraph 20 Defendants deny that each Ordinance and specifically Section Three of Ordinance 1052 and Section 22-20 of Chapter 22 are so strict, odious or vague as to be in violation of Plaintiffs constitutional rights. Defendants further aver that said Ordinances and each and every provision thereof are in all respects a valid and constitutional exercise of a police power vested in the Village of Schaumburg under the constitution and laws of the State of Illinois.

21. In answer to paragraph 21 Defendants deny that the Village of Schaumburg Village Board does not uniformly enforce the provision of the 75% test and say that said allegations are nothing but the inaccurate and totally unsupported conclusions of the pleader.

22. In answer to paragraph 22 Defendants deny that other charitable organizations are not required to submit information demanded by the Ordinance and deny that the Plaintiffs rights to equal protection of the laws and due process have been violated.

23. In answer to paragraph 23 Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by

the Chief of Police of the Village of Schaumburg. Defendants further aver however, that if Plaintiffs violate municipal ordinances, they as all other persons who violate the ordinances of the Village of Schaumburg will be prosecuted for said ordinance violations.

24. In answer to paragraph 24 Defendants say that the adoption of said Ordinance was undertaken pursuant to the authority vested in the corporate authorities of the Village of Schaumburg by the Constitution and Laws of the State of Illinois and further aver that Defendants possess the authority vested in them as Trustees of the Village of Schaumburg.

25. In answer to paragraph 25 Defendants admit that all acts taken by them were taken pursuant to the authority vested in the Defendants and the Village of Schaumburg by the Constitution and Laws of the State of Illinois, but deny that said acts were merely under Color of Law and aver that all acts taken were in full compliance with the valid constitutional provisions and statutes of the State of Illinois and the valid Ordinances of the Village of Schaumburg.

26. In answer to paragraph 26 Defendants deny each and every allegation of said paragraph 26. Defendants specifically deny that the Plaintiffs were and are further being subjected to a deprivation of their right to free speech, freedom of association, or to access to the Courts. Defendants deny that the Plaintiffs have been denied equal protection of the law or have been denied life, liberty and property without due process of law and deny that any Plaintiffs have been denied rights, privileges or immunities in violation of the Fourteenth Amendment.

27. In answer to paragraph 27 Defendants deny that the Plaintiffs interests have been or will continue to be irreparably harmed, adversely affected by any of the acts of the Defendants and further deny that there have been any unlawful acts of the Defendants.

28. Defendants deny the allegations of paragraph 28.

WHEREFORE, Defendants respectfully pray that this Honorable Court dismiss Count I of said Amended Complaint for failure to state a cause of action and for failure to set forth facts showing wherein this Court has jurisdiction to grant any relief requested.

Count II

29. In answer to paragraph 29 Defendants reallege the answers to paragraphs 8 and 9 of Count I.

30. In answer to paragraph 30 Defendants admit that said Ordinance 1052 requires a permit, but denies that said permit is issued at the arbitrary discretion of the Village Board and avers that the Village Board is without authority to deny a permit to any person or organization which meets the requirements of said Ordinance.

31. In answer to paragraph 31 Defendants deny that said Ordinance, specifically Section Three thereof, is so strict, odious or vague as to be in violation of Plaintiffs constitutional rights and aver that said Ordinance and specifically Section Three thereof is in all respects a valid and constitutional exercise of the police power of the Village of Schaumburg granted pursuant to the Constitution and Laws of the State of Illinois. Defendants further aver that the standards set forth in said Ordinance are in all respects valid, specific and definite and are reasonably related to the objectives of the Ordinance.

32. In answer to paragraph 32 Defendants deny that said Ordinance and threat of enforcement constitutes a prior restraint upon, or an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts and deny that the Ordinance in any way violates the First Amendment to the Constitution of the United States or the Fourteenth Amendment to the Constitution of the United States.

33. In answer to paragraph 33 Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by

the Chief of Police of the Village of Schaumburg, but aver that in the event the Plaintiffs seek to violate the ordinances of the Village of Schaumburg they, like all other persons violating the ordinances of the Village of Schaumburg, will be prosecuted.

34. In answer to paragraph 34 Defendants deny that the Plaintiffs interests have been or will continue to be irreparably harmed or adversely affected or aggrieved by the foregoing ordinance and deny that said ordinance is unlawful.

35. In answer to paragraph 35 Defendants deny that the Plaintiffs have no adequate remedy at law.

WHEREFORE, Defendants respectfuly pray that Count II of said Amended Complaint be dismissed for failure to state a cause of action and for failure to show wherein federal jurisdiction may properly be invoked.

Count III

36. In answer to paragraph 36 Defendants reallege the answer to paragraph 10. of Count I.

37. In answer to paragraph 37 Defendants admit that no solicitation to obtain donations of money may take place without first having obtained a permit as required by ordinance, but deny that the permit is issued at the arbitrary discretion of the Schaumburg Village Board. Defendants aver that all persons meeting the requirements of said ordinance are entitled to permits and are so issued permits by the Village of Schaumburg.

38. In answer to paragraph 38 Defendants deny that said ordinance and specifically Section Three is so strict, odious or vague as to be in violation of the Plaintiffs constitutional rights and aver that said ordinance is in all respects a valid and constitutional exercise of the police power vested in the Village of Schaumburg by the Constitution and Laws of the State of Illinois.

39. In answer to paragraph 39 Defendants deny that such ordinance and the threat of enforcement constitutes a prior re-

straint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, press and association and access to the courts and deny the allegations of paragraph 39 and specifically deny that said ordinance violates in any manner the First or Fourteenth Amendment to the Constitution of the United States.

40. In answer to paragraph 40 Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, but aver that if Plaintiffs like all other persons, violate the ordinances of the Village of Schaumburg, they will be subject to prosecution.

41. Defendants deny the allegations of paragraph 41 and specifically deny that the Plaintiffs' interests have been or will continue to be irreparably harmed, adversely affected or aggrieved by said ordinance and deny that said ordinance is unlawful.

42. Defendants deny that the Plaintiffs have no adequate remedy at law.

43. As affirmative defense the Plaintiffs say on information and belief that the CBE is primarily devoted to raising funds for the benefit and salary of its employees and that its charitable purposes are negligible as compared with the primary objective of raising funds. Defendants further say and information and belief that more than 60% of the funds collected have been spent for benefits of employees and not for any charitable purposes.

In support of said allegations the Defendants submit herewith as Exhibit A an article appearing in the Suburban Trib for Southwest Cook County on Wednesday, November 10, 1976.

44. As further and affirmative defenses the Defendants say that the ordinances of the Village of Schaumburg relating to charitable organizations and the solicitation of funds are in all respects valid and constitutional exercise of a legislative author-

ity vested in the President and Board of Trustees by the Constitution and Statutes of the State of Illinois.

45. Defendants further aver that there is no absolute right under the Federal Constitution to enter upon the private premises of another and knock on a door for any purpose and the police power permits reasonable regulation of public safety. That door to door canvassing and solicitation are not immune from regulation under the State's police power whether the purpose of the regulations is to protect from danger or to protect the peaceful enjoyment of the home. That the ordinances of the Village of Schaumburg are so directed.

WHEREFORE, it is respectfully prayed that Count III of said Complaint be dismissed for failure to state a cause of action and for failure to set forth facts sufficient to envoke the jurisdiction of the Federal Courts.

VILLAGE OF SCHAUMBURG, ET AL.
Defendants

By /s/ JACK M. SIEGEL
Jack M. Siegel
Their Attorney

C.B.E. v. Schaumburg

Suburban Trib
Southwest Cook County
Wednesday, Nov. 10, 1976

Is $$ real cause in clean-air fight?

Suburban Task Force Report

A college student, petition in hand, rings the doorbell of a suburban home.

"Hi, I'm Chuck Smith of the Illinois Public Action Council. We're talking to people in your neighborhood today about common problems like utility rate increases and we need your help," he tells the residents who answers.

If the resident queries him extensively on the organization, he'll probably leave. More likely, he'll find that not much explanation is needed to collect a signature and his real objective — a cash donation.

THIS SCENARIO, repeated daily throughout the suburbs, illustrates how two closely related organizations — Citizens for a Better Environment [CBE] and the Illinois Public Action Council — have raised more than $1 million in the suburbs in the last five years with a quick-sell, door-to-door sales program.

Chances are that most of this money was donated by people with only sketchy knowledge of the organization they were donating to, and of how their money would be spent.

USING A quick-sell approach to complex political issues, two closely related Chicago groups have raised more than $1 million in the suburban area in the last five years. In a three-part series beginning today, the Suburban Task Force examines the background, solicitation practices, and accomplishments of Citizens for a Better Environment and the Illinois Public Action Council. The series was researched by Thomas Witosky, Richard Keeton, Abigail Foerstner, and Art Barnum and written by Mary Swanton.

They probably didn't know that an average of 63 cents of every dollar they donated to CBE went to pay salaries of the organizations' employes.

THEY PROBABLY are unaware of CBE's history of legal problems in New York and Illinois.

If their home town has a municipal solicitation ordinance, they probably didn't know that CBE has diverted some of the money it has collected to seek court rulings overturning those ordinances.

Contributors to both organizations probably don't realize the close relationship between the two groups.

These are some of the facts uncovered by the Suburban Task Force in an extensive study of the two groups.

THE PICTURE that emerges from the study is a complex one. It points up the problems of funding a citizens organization, even one with laudable goals and many accomplishments.

It shows that the fund-raising technique developed by the two organizations and now serving as a model for similar groups around the country — the use of paid, door-to-door solicitors — can lead to abuses that tarnish the organizations' image.

Since its founding in 1971, CBE has developed a program of research and legal action primarily directed at forcing private industries and government agencies to clean up air and water pollution.

THE ILLINOIS Public Action Fund, predecessor to the Illinois Public Action Council, was formed in November, 1974, as the fund-raising and lobbying arm of CBE. However, that purpose was dropped in October, 1975, when the group was renamed and consolidated with the Illinois Council for Citizens Action.

Since then, Public Action has established a statewide federation of 22 citizens lobby groups interested in such issues as utility rates, neighborhood preservation, and land-use planning.

The two organizations have raised about 80 per cent of their total funding through door-to-door solicitation in the suburbs.

Although solicitors for the two organizations are instructed to tell potential contributors that the organizations are unrelated, the Suburban Task Force found the following:

- The two groups share the 26th floor of an office building at 59 E. Van Buren St., Chicago.
- Marc B. Anderson, founder of CBE, was cofounder of Public Action.
- Three members of the Public Action board of directors have held positions with CBE.
- The groups coordinate their fund-raising activities.

Anderson first denied to Suburban Task

Please turn to page 2

Fund raisers' approach is hard sell

From page 1

reporters that the two groups are related. He subsequently admitted that the organizations jointly schedule their solicitation efforts and sometimes hold joint briefing sessions.

HE SAID, HOWEVER, that it is accurate for fund raisers to deny there is a relationship between the groups because CBE is an environmental research group while Public Action is forming a statewide citizens lobby.

Suburban Task Force reporters talked to more than 20 past and present employes of both organizations and found that all — even those who quit in internal disputes — believe that the organizations are making significant accomplishments.

However, more than two-thirds of the $290,399 collected by CBE in fiscal year 1974-75 was spent on salaries and employe health benefits. Similar, though slightly smaller percentages, have been spent on salaries each year since CBE's founding.

IN 1972-73 ABOUT 51 per cent of the salary expenditures went to fund raisers and solicitors, with the balance to researchers and program organizers. A similar percentage of the salary expenditures apparently has gone to solicitors in recent years, but exact figures aren't available.

The Illinois Public Action Council's predecessor organization devoted approximately 59 per cent of the $55,727 collected in the six months prior to May 31, 1975, to salaries and staff health benefits.

About 69 per cent of the salaries were paid to solicitors and fund raisers, and 31 per cent to program organizers. These percentages may be unusually high because this was the first six months of the group's operation.

THESE FIGURES, on file with the Illinois attorney general's office, contrast with salary and benefit costs of 27 per cent for the American Cancer Society [Illinois Division]; 15 per cent for the Heart of Illinois United Way organization; and 22 per cent for the Chicago chapter of the National Multiple Sclerosis Society.

However, supporters of the two organizations claim that such comparisons are unfair for two reasons. First, large charities have access to volunteer solicitors. Anderson contends that fund raising by paid solicitors is the only way to sustain a statewide or

Please turn to page 6

Quick sell of an issue benefits fund seekers

From page 2

metropolitan citizens organization.

Second, some large charities simply dole out grants, while CBE and Public Action must pay researchers and organizers to develop and implement their programs.

"WHEN YOU LOOK at the percentage of funds spent on programs," Anderson said, "these organizations [CBE and Public Action] are in the upper 50 per cent of nonprofit organizations." A former researcher for CBE said he had studied other citizen action groups and found CBE to be one of the most efficient.

The now-defunct New York City branch of CBE apparently was somewhat less than efficient, however. A spokesman for the New York State Board of Social Welfare, the agency that audited the New York branch's books, said that the financial records "were unsatisfactory and sloppy."

"There were missing checks and some of those checks had been made out to cash," he said.

WHEN ANDERSON closed the New York office in September, 1973, after 15 months of operation, some of the financial records disappeared. Weltman & Co. of Chicago, auditors for CBE, refused to verify the finances of the last 3½ months of the New York operation because of the missing books. Neither Anderson nor anyone else contacted by the Suburban Task Force could explain the disappearance.

Shortly after the office was closed, the New York attorney general's office filed suit against CBE, charging the organization had perpetrated a "fraud upon the public" by using 74 per cent of the $175,808 collected in fiscal year 1972-73 for administration and fund-raising expenses. The suit never came to trial because of the demise of the New York organization.

ANDERSON AND others said the New York venture failed because CBE tried to expand without first developing a trained management team. They said they believe that the suit could have been settled successfully if a good management team could have been formed.

The organization's legal troubles in New York weren't its first. In 1971, Illinois Atty. Gen. William J. Scott filed suit against CBE for violating state law by failing to register its solicitors. He also charged CBE with falsely claiming in printed material and in solicitation speeches that CBE was working to "increase the size of the attorney general's staff and consequently their effectiveness in the fight against pollution."

The suit was settled with a consent decree in which CBE agreed to change its solicitation pitch and to register its solicitors.

DONALD G. MULACK, chief of the Charitable Trusts and Solicitation Division of the Illinois attorney general's office, said in a recent interview that although his office is convinced of CBE's commitment to environmental issues, it continues to monitor the group's solicitation practices, registration of solicitors, and allocation of funds.

Next: A look at door-to-door canvassing as a fund-raising tool for citizens groups.

Money skill a full-time job

IN 1970, a frustrated young high school dropout was selling encyclopedias and dreaming of a more challenging career.

One night, while talking to fellow salesmen, the idea hit him. "If we can sell encyclopedias," a former associate recalls him saying, "then we can come up with something that sells the environment in the same way."

Although Marc B. Anderson denies the story, he has obviously used the sales techniques of his encyclopedia experience in developing the fund-raising methods of Citizens for a Better Environment [CBE] and its offshoot, the Illinois Public Action Council.

IN DOING SO, Anderson, 30, of Chicago, has developed a national reputation for success in funding citizens action organizations that he is using to build a new career as a consultant to community groups throughout the country.

In July, Anderson left CBE to devote more time to his newly formed consulting service, the Hudson Bay Co. of Chicago. He remains on the board of Public Action.

His new business, which already is operating in seven states, will show other activist groups how to use quick sell door-to-door solicitations to raise funds.

DESPITE HIS success and growing reputation, Anderson also has his critics. One former staff member said that although he respected Anderson's organizational abilities, he questioned his motives.

"I guess I'll always wonder whether Marc was doing all this for the improvement of the environment or because he was in it for the money," the former staff member said.

In a recent interview, Anderson denied that he was trying to use social issues for great personal gain.

"I GOT INTO this because I'm basically a person who likes the country, nature, and fresh air. At the time I founded CBE, I was truly concerned about our environment and decided to do something about it," Anderson said.

But Anderson also believes that people in community action work deserve better salaries than they historically have received.

"To keep good, professional organizers, there must be a way to pay them adequately. I don't think those people should be expected to live on $700 a month anymore."

ANDERSON ESTIMATES his own income for this year at a modest $16,000 to $18,000, although he expects the Hudson Bay Co. to gross $60,000 to $70,000 this year. He was paid until July at his annual CBE salary of $12,500, and he continues as a paid board member of Public Action.

David D. Comey, of Chicago, who succeeded Anderson as head of CBE, agrees with Anderson that employes of citizen action groups should be well paid.

Comey holds the dual posts of executive director and director of research, which has been split before Anderson's departure, and is paid $37,500 a year, "probably one-fourth of what I would make in private industry."

UNITED STATES DISTRICT COURT

* * (Caption—76 C 470) * *

MOTION FOR SUMMARY JUDGMENT

Now Come the Plaintiffs, Citizens for a Better Environment, and Larry Hoellwarth, by their attorney, Michael R. Berman, and move this Honorable Court, upon the pleadings herein and upon all the records, files, and proceedings in this cause, for Summary Judgment in favor of Plaintiffs on the ground that there is no genuine issue as to any material fact, and Plaintiffs are entitled to judgment as a matter of law.

In support of this Motion, Plaintiffs herewith file their Memorandum of Law.

/s/ MICHAEL R. BERMAN
Michael R. Berman
Attorney for Plaintiffs

Dated: December 2, 1977

MICHAEL R. BERMAN, ESQ.
59 East Van Buren, Suite 2610
Chicago, Illinois 60605
(312) 939-1530

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

LARRY A. HOELLWARTH, being first duly sworn on oath, deposes and states that he is of legal age, that he is competent to testify as to the matters herein stated, and if called to testify, would testify on personal knowledge, as follows:

1. That he is employed by Citizens for a Better Environment (CBE).

2. That his duties with CBE include the direct supervision and control of the canvassing program.

3. CBE is an Illinois Not-for-Profit Corporation, incorporated in 1971. Its stated corporate purposes include: "to encourage and assist the conservation of the environment, to provide educational and informational materials and programs concerning the environment and, in general, to promote the protection of the environment."

4. CBE is in good standing with the Charitable Trusts Division of the Office of the Illinois Attorney General and has been granted both tax-exempt and tax-deductible status by the United States Internal Revenue Service.

5. CBE employs a staff of "canvassers," who are screened, trained and observed prior to hire. Following their training, each canvasser is registered with the office of the Illinois Attorney General. Each canvasser attends regular seminars on a twice-a-week basis throughout their period of employment to keep them current on developments in the environmental movement.

6. CBE is almost entirely supported by small contributions from individual citizens. Thus the door-to-door canvass is the single most important source of funds for its continued program.

7. Yearly, CBE canvasses nearly every Northeastern Illinois community. The canvass activity normally occurs during the late afternoon and early evening hours (approximately 4 to 9 P.M.)

and canvassers approach all residences not posted with "No solicitors invited" or "No trespassing" notices.

8. In the door-to-door canvass, representatives distribute informative pamphlets on environmental subjects and on CBE activities, answer questions posed by residents, accept pollution complaints on a form provided for follow-up investigation and possible action by CBE, accept signatures to a statement of citizen's support to CBE's program, upon which thousands upon thousands of signatures have been collected, and accept contributions from such residents.

9. The canvass in a particular community is preceded by acquisition by CBE of the necessary permits, registration or approval from the respective governmental bodies for the specific dates of canvass.

10. That CBE has requested such permission to canvass from the Village of Schaumburg, since, to wit April 1973.

11. That the Village of Schaumburg has denied a request on May 22, 1973, and persists in such denial.

12. That the defendant municipality received a final request for solicitation dated January 22, 1976.

/s/ LARRY A. HOELLWARTH
Affiant

Subscribed and sworn to before me this 2nd day of December 1977.

/s/ MIMI BARR
(SEAL) *Notary Public*

UNITED STATES DISTRICT COURT.

* * (Caption—76-C-470) * *

ANSWER TO MOTION FOR SUMMARY JUDGMENT

Now comes the Village of Schaumburg, et al., Defendants herein by Jack M. Siegel and in Answer to the Motion for Summary Judgment heretofore filed herein says as follows:

1. Said Motion for Summary Judgment is improper for the reason that there are genuine issues as to material facts and the Plaintiffs are not entitled to judgment as a matter of law.

2. That the Complaint fails to set forth facts showing wherein the Plaintiffs have been denied any federally protected constitutional or statutory rights, but the allegations of said Complaint are merely the unsupported legal conclusions of the pleader.

3. That there is a presumption of validity attaching to the ordinances of the Village of Schaumburg and the Complaint fails to state facts sufficient to overcome presumption of validity.

4. That the ordinances of the Village of Schaumburg are proper exercises of a legislative authority vested in the President and Board of Trustees of the Village of Schaumburg and are directed to the protection of citizens of the Village of Schaumburg and are intended to protect the peaceful enjoyment of the home. *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 48 L. Ed. 2d 243. That the regulation of charitable organizations is in all respects a valid exercise of said legislative authority and the ordinance and Article Three of Chapter 22 of the Schaumburg Village Code sets forth clear and specific standards which are reasonably related to the objectives of said ordinance.

WHEREFORE, it is respectfully prayed that said Motion for Summary Judgment be denied.

In support of this Answer the Defendants herewith file their Memorandum of Law.

/s/ JACK M. SIEGEL
Jack M. Siegel
Attorney for Defendants

SUPPLEMENTAL AFFIDAVIT FILED DEC. 23, 1978 AS APPENDIX TO PLAINTIFFS REPLY MEMORANDUM IN SUPPORT OF MOTION OR SUMMARY JUDGMENT.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

KENNETH M. ARWAY, being first duly sworn on oath, deposes and states that he is of legal age, that he is competent to testify to the matters herein stated, and if called to testify would testify on personal knowledge, as follows:

1. I am Director of Development for Citizens for a Better Environment.

2. In 1975 CBE's certified audit shows that 23.3% of its income was spent on fundraising and that 21.5% of its income was spent on administration .

3. In 1976 CBE's certified audit shows that 23.3% of its income was spent on fundraising, while 16.5% of its income was spent on management.

4. CBE has an in-house research staff. This research staff consists in part of an expert on nuclear power, a physicist, a biochemist, a geneticist, an expert on electric utilities and a research associate.

KENNETH M. ARWAY

Subscribed and sworn to before me this 23rd day of December 1977.

/s/ PATRICIA TREANOR
(SEAL) *Notary Public*

IN THE UNITED STATES DISTRICT COURT
* * (Caption—76 C 470) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Prentice H. Marshall one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, January 23, 1978, at 9:30 o'clock a.m.

Present:

Michael Berman, Esq., on behalf of plaintiff.

[2] The Clerk: 76 C 470, Citizens For A Better Environment vs. Justice, for ruling.

Mr. Berman: Michael Berman for Citizens For A Better Environment.

The Court: How are you, Mr. Berman.

This is an action by a plaintiff, Citizens For A Better Environment, an Illinois Not For Profit corporation, and Larry A. Hoellwarth, who is employed by the plaintiff Citizens For A Better Environment, against the defendant, Village of Schaumburg, Illinois and various of the public officials of Schaumburg, Martin J. Conroy, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers and Edward Olsen, in which the plaintiffs challenge certain provisions of an ordinance regulating soliciting by charitable organizations adopted by the Village Board of the Village of Schaumburg, upon the ground that the ordinance impermissibly infringes plaintiff's First Amendment rights, and, therefore, violates the First Amendment and the Fourteenth Amendment to the Constitution of the United States.

The action is here under Sections 1983 and 1988 of Title 42, and jurisdiction is here under Section 1343(3) of Title 28.

The ordinance in question evidently has been codified as a part of Chapter 22 of the Village's Code.

A great deal has been written on the subject of [3] these solicitation ordinances. We have written an opinion in this case

in which originally there were a number of defendants, in which we have expressed our views with regard to the constitutional requirements for regulation and solicitation by charitable or political action groups, and just recently the Court of Appeals in a rather unusual action published within the last couple of weeks a decision which it had rendered in September of 1975, in Citizens For A Better Environment vs. The City of Park Ridge, dealing with the Park Ridge antisolicitation ordinance.

One never knows what occasions the Court of Appeals, two and a half years after it's decided a case by a memorandum order, to issue a printed opinion, but it came at a fortuitous time as far as I was concerned, and I assume that the reason the Court of Appeals did it is to give those of us in the District Court some guidance, because the Citizens For A Better Environment have been very vigorous in their efforts to get out from under impermissible restraints.

I am not going to write anything in this case. I think I have written enough on the subject.

I have reviewed the papers. The matter is here on the plaintiff's motion for summary judgment. I've reviewed the papers and I find several difficulties with the defendants' ordinance. I find those difficulties on its face, and I find that there is no need for an evidentiary hearing [4] of any type.

[4] The plaintiff doesn't seem to challenge the definition of charitable organization, so I shan't do anything with it, although I say in passing that I have some difficulty with it, particularly when it is applied to an organization such as the CBE which, while it enjoys charitable status under the Illinois Act to regulate solicitation and collection of funds for charitable purposes, and evidently enjoys tax exempt status under the Internal Revenue Code of the United States, one can argue that the Citizens For A Better Environment is not a traditional charitable operation. It is an information-gathering and information-dissemination and, as I think I characterized it a few moments ago, at times it is akin to a political action group using political action in its

broadest sense. But it does not quarrel with its need to meet certain of the standards of the Schaumburg ordinance. It does not quarrel with the requirement that it demonstrate that it has complied with the Illinois Act, and it doesn't quarrel with the requirement that it show that it is a tax exempt organization to the Internal Revenue Code, because it alleges in its complaint that it is both of those things.

What it particularly challenges is subparagraph (g) of Section 3 of the Schaumburg Code—excuse me, of the Schaumburg Ordinance, and the Code provisions which appear in subsection (g) of Section 22-20.

[5] I believe that its challenge is valid or well-founded. The application of subsection (g) to the activities of the Citizens For A Better Environment, in my opinion, exposed the plaintiff to exactly the same vices which were presented to the Supreme Court in Snyder against State, 308 US 147, back in 1939.

I believe that the strictures of that subsection provide a subtle form of censorship. I think that it is reasonable for a city to want to know who its canvassers are to require them to register as is required under the ordinance, but I just don't see that the city, in this area, has any legitimate interest in the tests that it prescribes in subsection (g), and that those tests do constitute an impermissible restraint on the exercise of First Amendment rights.

As I construe the ordinance, it appears to me—and perhaps, Mr. Berman, you can correct me if I am wrong—but it appears to me that once (g)—subsection (g) is out of the case, the plaintiff will be entitled to a permit under the balance of the ordinance.

Mr. Berman: It appears that way to me, too.

The Court: And the language of the ordinance is mandatory that the Village Board shall issue a permit.

So, for the present, I think that we will content ourselves with declaring subsection (g) of Section 3 of the Ordinance, and subsection (g) of Section 22-20 of the Code [6] invalid, and we will direct you, Mr. Berman, to prepare a declaratory judgment in accord with what we have said here today.

Mr. Berman: I do have one thing on that. In Section 7 of the Ordinance, it says, "If the Village Board shall find and determine that all requirements of this Ordinance have been met, a permit shall be issued."

That seems somewhat mandatory, but the Citizens For A Better Environment have had a problem in the past even when it appears to be a mandatory ordinance, because a lot of times we have been denied the permit, which seems to be an ongoing problem.

The Court: Well, include in your judgment, Mr. Berman, a direction on the defendants to issue the permit. You have complied with the ordinance now, and I think you are entitled to the permit. So include in the judgment order an order on the defendants to issue the permit. Okay.

Mr. Berman: Okay. I guess—the only other issue is about length of time for them to act on our request, is another problem we have.

The Court: We are going to direct them to issue you the permit.

Mr. Berman: Sometimes it takes them several months to meet—

The Court: Forthwith.

[7] Mr. Berman: Thank you very much, your Honor. On the motion—or the decision from the Seventh Circuit, Citizens For A Better Environment had petitioned the Seventh Circuit to publish that order.

The Court: Is that how it happened?

Mr. Berman: Because of all the ongoing problems we had, we felt it would be important enough for them to publish, and they were kind enough to do that.

The Court: Okay. Once we get that order, that will close this case out, so get it in to me, will you, Mr. Berman.

Mr. Berman: Okay, we will.

Which were all the proceedings had in the above-entitled matter on the day and date aforesaid.

[8] IN THE UNITED STATES DISTRICT COURT

* * (Caption—76 C 470) * *

CERTIFICATE

I Hereby Certify That the above and foregoing transcript, consisting of Pages 1 to 7, inclusive, is a full, true and accurate transcript of the official shorthand notes taken in the hearing of the above-entitled cause on Monday, January 23, 1978.

/s/ RICHARD H. DAGDIGIAN
Richard H. Dagdigian
Official Court Reporter, United States District Court, Northern District of Illinois

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable Prentice H. Marshall.

Case No. 76 C 470 Date, Feb. 17, 1978

Title of Cause—Citizens for a better environment v. Village of Justice.

Brief Statement of Motion—Order.

Enter Final Judgment. Plaintiffs' motion for summary judgment on Count I is granted. The action of the Village of Schaumburg denying CBE permission to canvass and solicit funds in the Village is declared in violation of the constitutional rights of CBE. The Village of Schaumburg is enjoined from further prohibition of the CBE canvass and solicitation of funds and is ordered to issue a permit to canvass and solicit funds to CBE forthwith. Draft

IN THE UNITED STATES DISTRICT COURT

* * (Caption—76 C 470) * *

FINAL JUDGMENT.

The Plaintiffs in this action are the Citizens for a Better Environment (CBE), an Illinois not-for-profit corporation, and a certain named employee of the organization. CBE's major source of financial support consists of small contributions from individual citizens. CBE wishes to conduct a door-to-door fund-raising canvass in the defendant village, Schaumburg, Illinois. In Count I, the Plaintiffs contend that the Village of Schaumburg's refusal to allow a CBE canvass deprives them of their rights guaranteed by the first and fourteenth amendments to the United States Constitution. Counts II and III of the Complaint charge that Village of Schaumburg's solicitation ordinance violates the first and fourteenth amendments. Count II challenges the Ordinance as enacted by the Village of Schaumburg, and Count III challenges its subsequent codification.

CBE seeks: (1) judgment declaring the ordinance void and an injunction prohibiting its enforcement; and (2) judgment declaring the Village Board's action void and an injunction prohibiting further interference with the Plaintiffs' right to canvass Schaumburg. CBE now moves for summary judgment. This motion is now ready for decision on the pleadings, exhibits, and memoranda submitted by the parties.

The Schaumburg ordinance regulates charitable solicitation. All prospective solicitors must first procure a charitable solicitation permit from the Village. The applicant must submit information, including the name of the organization and the name under which it intends to solicit contributions, the name and address of the person in charge of solicitation in the Village, the names and addresses of all persons who will solicit contributions in the Village, the dates and times of day such solicitations are

to be made, and the geographic area within the Village wherein such solicitation shall be conducted at a particular time and day, a written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," satisfactory proof that the organization is a tax-exempt organization under the Internal Revenue Code of the United States, § 501(c)(3), and satisfactory proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization.

Chapter 22, § 20(g), of the Schaumburg Village Code states the following:

> (g) Satisfactory proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
>
> (1) Salaries or commissions paid to solicitors;
>
> (2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.
>
> For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating that distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

CBE's main concern is with this particular requirement.

Through the years, the United States Supreme Court has enunciated definitive guidelines for application when the gov-

ernment's right to regulate clashes with first-amendment freedoms. Plainly, the government may regulate solicitation in order to protect the community from fraud. A city may, for example, require the solicitor to appear and establish his identity and authority to act in behalf of the cause he represents. *Cantwell* v. *Connecticut*, 310 U. S. 296, 306 (1940). Any action impinging upon the freedom of expression and discussion, however, must be minimal, and intimately related to an articulated, substantial government interest. As noted in *NAACP* v. *Button*, 371 U. S. 415, 438 (1963), "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." In a long line of cases the Court has consistently invalidated statutes and ordinances that permit a public official to exercise broad discretion in granting or denying the right to engage in constitutionally protected activities; e.g., *NAACP* v. *Button, supra; Staub* v. *City of Baxley*, 355 U. S. 313 (1958); *Martin* v. *City of Struthers*, 319 U. S. 141 (1943); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Schneider* v. *State*, 308 U. S. 147 (1939).

In this Court's decision of February 25, 1977, in this case entered regarding the Village of Palatine, this Court stated:

> . . . Also constitutionally impermissible, is the provision of the ordinance requiring the applicant to supply "such additional information as the Chief of Police" of the Village of Palatine requests.
>
> This provision authorizes the Chief of Police in his discretion to solicit information about an organization's views and practices, and to deny a permit on the basis of his evaluation of those views and practices.
>
> In fact, this appears to be what happened. Exhibit 4 of the Hoellwarth affidavit is a letter from the Village Board denying plaintiffs the right to solicit because in the Board's view, the majority of plaintiffs contribution do not make their way to plaintiffs' chartered function. This is a form of censorship prohibited by the Supreme Court.

The Schaumburg requirement that 75% of the proceeds of a solicitation will be used directly for the charitable purpose of the organization before a permit will be issued is also constitutionally impermissible.

It does not make any difference that in this case a similar requirement was codified by the Village Board of Schaumburg instead of imposed by the Chief of Police.

The Village of Schaumburg's soliciting ordinance mandates the issuance of a permit to any person or group that can meet its requirements. CBE was apparently denied the right to solicit in the Village of Schaumburg only because it did not comply with this requirement in § 20(g) since CBE is able and willing to comply with the other requirements and does not challenge them at this time.

The Plaintiffs' Motion for Summary Judgment on Counts II and III is granted insofar as Section 20(g) of Chapter 22 of the Village of Schaumburg Code and § 3(g) of Village of Schaumburg ordinance entitled "An Ordinance Regulating Soliciting by Charitable Organizations" and numbered 1052 are declared unconstitutional and void on their face, and their enforcement against CBE is hereby enjoined.

The Plaintiffs' Motion for Summary Judgment on Count I is granted. The action of the Village of Schaumburg denying CBE permission to canvass and solicit funds in the Village is declared in violation of the constitutional rights of CBE. The Village of Schaumburg is enjoined from further prohibition of the CBE canvass and solicitation of funds and is ordered to issue a permit to canvass and solicit funds to CBE forthwith.

Enter:

/s/ PRENTICE H. MARSHALL
Judge

Dated: February 17, 1978.

UNITED STATES DISTRICT COURT

* * (Caption—76 C 470) * *

JUDGMENT

This action came on for hearing before the Court. Honorable Prentice H. Marshall, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged Final Judgment Entered. Plaintiffs' motion for summary judgment on Count I is granted. The action of the Village of Schaumburg denying CBE permission to canvass and solicit funds in the Village is declared in violation of the constitutional rights of CBE. The Village of Schaumburg is enjoined from further prohibition of the CBE canvass and solicitation of funds and is ordered to issue a permit to canvass and solicit funds to CBE forthwith.

Dated at Chicago, Illinois, this 17th day of February, 1978.

H. STUART CUNNINGHAM
Clerk of Court

By: /s/ RITA L. DUMAS
Deputy Clerk

UNITED STATES DISTRICT COURT

* * (Caption—76 C 470) * *

NOTICE OF APPEAL

Notice is hereby given that the Village of Schaumburg, one of the defendants herein, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment order entered in this action on the 17th day of February, 1978, which order granted the plaintiffs' motion for summary judgment and held that the action of the Village of Schaumburg denying the plaintiffs permission to ca ass and solicit funds violated the constitutional rights of the plaintiffs, and further provided that the Village of Schaumburg was enjoined from further prohibition of the plaintiffs' canvass and solicitation of funds, and was ordered to issue a permit to canvass and solicit funds to the plaintiffs forthwith, all in accordance with a certain draft order.

/s/ JACK M. SIEGEL
Attorney for Village of Schaumburg, Defendant

JACK M. SIEGEL
39 South LaSalle Street
Chicago, Illinois 60603

Supreme Court, U. S.
FILED
MAR 30 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT,
AN ILLINOIS NOT-FOR-PROFIT CORPORATION, ET AL.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

EDWARD W. OSANN, JR.
One IBM Plaza—4600
Chicago, Illinois 60611

BILL FORCADE
ROBERT GOLDSMITH
THOMAS CRAWFORD
CITIZENS FOR A BETTER ENVIRONMENT
Suite 2610
59 East Van Buren
Chicago, Illinois 60605
(312) 939-1530

Attorneys for Respondent

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Respondents pray that the requested Writ of Certiorari not issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on December 1, 1978, which affirmed the judgment of the United States District Court for the Northern District of Illinois, entered on February 17, 1978.

OPINIONS BELOW

The decision of the Circuit Court of Appeals for the Seventh Circuit, is set forth in Petitioner's Appendix A, and published at 590 F. 2d 220 (1978). That decision affirmed the ruling of the District Court, set forth on Petitioner's Appendix B.

QUESTIONS PRESENTED

1. Whether the Seventh Circuit Court of Appeals was correct in affirming the judgment of the District Court that a provision of an ordinance and the Municipal Code of Schaumburg, which prohibited an organization claiming substantial door-to-door advocacy to promote a healthful environment from soliciting funds in that municipality, violated the First Amendment to the Constitution of the United States?

2. Whether a municipality may impose substantial limitations on expenditures for door-to-door political expression as a condition precedent to solicitation of funds in that municipality?

REASONS FOR REFUSING CERTIORARI

1. The Court of Appeals for the Seventh Circuit was correct in its judgment that the ordinance in question is unconstitutional because it violated the First Amendment.

2. The Court below distinguished its decision from the decision of the Fifth Circuit in *National Foundation* v. *City of Fort Worth*, and the decisions are not in conflict.

STATEMENT OF THE CASE

The complaint, answer and the Schaumburg ordinance relating to this case are contained in the Appendix as Appendix A, B, and C respectively.

This action was commenced in 1976 by Citizens for a Better Environment (hereinafter "CBE") and certain named officers of CBE against 19 municipalities in the Chicago area, including the Village of Schaumburg. CBE challenged the validity of various municipal ordinances which were claimed to regulate CBE's door-to-door activity. The complaint alleged that CBE was an Illinois not-for-profit corporation whose purpose was to protect, enhance and maintain the Illinois environment. Incident to that

purpose CBE alleged that it employs canvassers who go door-to-door to distribute literature on environmental topics, answer questions of an environmental nature when posed, solicit contributions to financially support the organization and its programs, and receive residents' grievances and complaints of an environmental nature so that CBE may offer assistance in their evaluation and redress.

CBE alleged that the defendant Village of Schaumburg had enacted an ordinance which regulated door-to-door requests for money and that the ordinance was being used to prohibit CBE's door-to-door activity in Schaumburg.

The Village of Schaumburg, in its answer, admitted that it had enacted an ordinance, Chapter 22, which regulates peddlers and solicitors [Chapter 22 has two parts: the first part, Ordinance 1103, Municipal Code Section 22-6 to 22-18, is entitled For Profit Peddlers and Solicitors (hereinafter "the commercial ordinance"); the second part, Ordinance 1052, Municipal Code Section 22-19 to 22-24, is entitled Charitable Organizations (hereinafter "the charitable ordinance").] The Village stated that "the commercial ordinance" did not purport to regulate organizations of the character of CBE, but that CBE was subject to "the charitable ordinance". The Schaumburg answer admitted that CBE had made applications for a permit under the ordinance and that the permit applications had been denied. Further, Schaumburg stated that Chapter 22 required a permit prior to the solicitation of money in Schaumburg and that CBE or anyone violating the ordinance would be prosecuted.

CBE moved the District Court for summary judgment, claiming Chapter 22, and specifically Section 22-20(g) of "the charitable ordinance" were unconstitutional as a violation of the First Amendment. Section 22-20(g) requires that 75% of the proceeds of solicitation go to charitable program; it specifically lists various expenses that can not be considered charitable program. Summary Judgment was granted (the District Court opinion is contained in Schaumburg's Petition for Writ of

Certiorari as Appendix B), with the District Court holding Section 22-20(g) unconstitutional and void on its face. The Court noted that CBE was able and willing to comply with the other provisions of "the charitable ordinance".

The Village of Schaumburg appealed the District Court ruling to the United States Court of Appeals for the Seventh Circuit. That Court affirmed the District Court decision that Section 22-20(g) was unconstitutional:

> "We do not decide the reasonableness of the 75 percent requirement as applied to solicitation by the more traditional charitable organizations. However, for the reasons stated below, the requirement is on its face unreasonable when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization.
>
> * * * * *
>
> "The 75 percent *might* be valid where solicitors represent themselves as mere conduits for contributions. But the requirement as it exists in the Village Code also applies where it is made clear that the contributions will be used for reasonable salaries of those who will gather and disseminate information relevant to the organization's purpose." Slip Opinion pp. 10-11.

The Seventh Circuit distinguished its holding from the Fifth Circuit's holding by stating:

> "Our conclusion is not inconsistent with the Fifth Circuit's decision in *Nat'l Foundation* v. *City of Ft. Worth*, 415 F. 2d 41 (5th Cir. 1969), cert denied, 396 U.S. 1040 (1970). That decision upheld an ordinance which limited the cost of solicitation of charitable contributions to 20 percent of total receipts. However, the ordinance also allowed an organization which did not meet the requirement to show that its percentage was not unreasonable. The court recognized that within the broad class of charitable organizations a rigid percentage requirement would be difficult to justify, stating:

> 'A fixed percentage limitation on the costs of solicitation might be undesirable and inapplicable if applied to all types of charitable organizations. What may be proper in one situation may not be so in other situations. The ordinance before us does not imply a fixed standard but permits a determination of reasonableness of the ratio between the cost of solicitation and the amount collected.'
>
> "Section 22-20(g) provides no similar flexibility.
>
> "Accordingly, the decision of the district court is affirmed." Slip Opinion pp. 11-12.

The Village of Schaumburg petitioned this Court for a Writ of Certiorari.

ARGUMENT SUPPORTING REASONS FOR DENYING CERTIORARI

Both the District Court and the Court of Appeals below agreed, without dissent, that summary disposition was proper, that the ordinance was facially invalid, and that no conflict exists.

A. Summary Disposition Is Proper Where an Ordinance Is Challenged as Facially Invalid Under the First Amendment and the Undisputed Facts Show a Justiciable Controversy Exists

Schaumburg averred in the District Court that the type of organization CBE purports to be is subject to the provisions of "the charitable ordinance"[1] (Defendants Answer ¶ 10), which precludes soliciting contributions without a permit (Defendants Answer ¶ 37). The parties agreed that CBE

1. The Village has been inconsistent about the function and application of "the charitable ordinance" and "the commercial ordinance". In answer to the amended complaint Schaumburg stated:

> ". . . (the commercial ordinance) which was attached to CBE's original complaint does not purport to regulate a charitable organizations (sic) or organizations of the character of CBE." Defendants Answer ¶ 11.

(Footnote continued on next page.)

made applications for that permit (¶'s 14-15) and that those applications had been denied (¶ 16). Further, the parties agreed that CBE or anyone would be prosecuted for violating "the charitable ordinance" (¶ 23). Thus, a specific present harm—denial of free speech—and a threat of future specific harm—prosecution—both exist. A facial challenge is proper where there is a "claim of specific present objective harm or a threat of specific future harm." *Laird* v. *Tatum*, 408 U. S. 1, 13-14 (1972). As noted by the Court of Appeals for the Seventh Circuit in the opinion below ". . . a controversy exists, and CBE has the personal stake in the outcome required by this Court in *Grandco Corp.* v. *Rockford*, (sic) 536 F. 2d 197, 207 (7th Cir. 1976)." Slip Opinion at 5.

It is a well settled principle that if a justiciable controversy exists in a case challenging a statute on the ground that it is overbroad and in violation of the First Amendment, a factual determination of the nature of the plaintiff and the effect of the statute on that particular plaintiff is unnecessary. "In the First Amendment context, the Court has permitted attacks on overly

(Footnote continued from preceding page.)

For the first time on appeal to the Seventh Circuit Schaumburg stated:

> "There is of course no bar against CBE or anyone else who does not meet the 75% requirement by virtue of the ordinance in question. Anyone who does not meet the 75% requirement is simply subject to the solicitation ordinance for commercial activities." Schaumburg Reply Brief, Pg. 7. See also Slip Opinion Pg. 9 Note 6.

Now before this Court Schaumburg argues:

> "This case presents a simple question as to whether a municipality may, in the interest of protecting the public from fraud, crime and undue annoyance, *prohibit door-to-door solicitation for funds* on private property by an allegedly charitable organization . . ." Schaumburg Petition for Writ of Certiorari, Pg. 27 [Emphasis added]

But, Schaumburg also argues:

> "It must be emphasized that the Village does not seek a total ban on such solicitations. It has reasonable regulations relating to solicitation for commercial purposes which are not at issue here." Schaumburg Petition for Writ of Certiorari, P. 7

broad statutes without requiring that the person making the attack demonstrate that in fact his specific conduct was protected." *Bates* v. *State Bar of Arizona*, 433 U. S. 350, 380 (1977).[2] The present case would provide no further elucidation of this principle of law. A factual determination of the actual activities of CBE would be superfluous since it is the "purported" activities that bring the ordinance into effect.

B. The Schaumburg Ordinance Regulating Charitable Solicitations Is Facially Invalid Under the First Amendment for Overbreadth and Vagueness

The Schaumburg ordinance in question in this case, "the charitable ordinance", requires a permit prior to soliciting contributions for any organization within the scope of the ordinance. The ordinance covers "[a]ny benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such which solicits and collects funds for . . . [a]ny charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose." Schaumburg Municipal code Section 22-19.

"Any . . . not-for-profit . . . group . . . which solicits and collects funds for . . . any benevolent purpose,"[3] presumably includes "Public Interest" groups with goals such as: improvement of the environment, racial equality, consumer protection or other socio-political ends. Groups with these goals frequently engage in door-to-door activity such as distribution of pamphlets, dialogue with residents, information dissemination, and incidental requests for financial assistance or paid membership. Public advocacy for such goals has been held by the Court to

2. See also, *Dombrowski* v. *Pfister*, 380 U. S. 479, 486 (1965); *Grayned* v. *City of Rockford*, 408 U. S. 104, 114 (1972); *Gooding* v. *Wilson*, 405 U. S. 518, 520-521 (1972); *Coates* v. *City of Cincinnati*, 402 U. S. 611, 616 (1971); *NAACP* v. *Button*, 371 U. S. 415, 432 (1963); *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940).

3. In the lower Court the Village stated that, ". . . no solicitation to obtain donations of money may take place without first having

(Footnote continued on next page.)

be political expression,[4] *N. A. A. C. P.* v. *Button*, 371 U. S. 415 (1963), whose protection is not diminished because of an incidental request for financial support. *Cantwell* v. *Connecticut*, 310 U. S. 296, at 307 (1940), *Bates* v. *State Bar of Arizona*, *supra*. Schaumburg admits that such group exists and that they "could" come within purview of the ordinance. Slip Opinion P. 9. Indeed, this very uncertainty concerning the applicability of the ordinance to those groups most likely to engage in door-to-door political discussion underscores the statutory vagueness. If Village counsel is uncertain, how would an applicant know?

(Footnote continued from preceding page.)

obtained a permit . . ." Defendants Answer ¶ 37. Hence, it would appear that any solicitation is the standard, not any solicitation for a "charitable" purpose.

4. Since 1970 Congress has passed substantial legislation in the area of environmental control; this legislation and its effect on our society are controversial. Congress has specifically provided for public input into governmental control of the environment under this legislation by both individuals and organizations.

> "The Congress . . . declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and *private organizations*, to use all practicable means and measures . . . to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony . . ." National Environmental Policy Act, 42 U. S. C. § 4321 [emphasis added].

Congress provided citizen suits to sharpen the response of government officials. See 42 U. S. C. § 2619 (Toxic Substances Control Act); 16 U. S. C. § 1540(g) (Endangered Species Act); 33 U. S. C. § 1413(g) (Marine Protection, Research and Sanctuaries Act); 33 U. S. C. § 1365 (Clean Water Act); 33 U. S. C. § 1515 (Deepwater Port Act); 42 U. S. C. § 300j-8 (Safe Drinking Water Act); 42 U. S. C. § 1857(h)(2) (Clean Air Act); 42 U. S. C. § 4911 (Noise Control Act); 42 U. S. C. § 6305 (Energy Policy and Conservation Act); 42 U. S. C. § 6972 (Resource Conservation and Recovery Act) and 15 U. S. C. § 2073 (Consumer Product Safety Act).

Congress has also "provided for, assisted and encouraged" public participation in the development, revision, and enforcement of regulations and standards under such laws. See 33 U. S. C. § 1351 (Clean Water Act); 42 U. S. C. § 6974 (Resource Conservation and Recovery Act); 42 U. S. C. § 7401, *et seq.* (Clean Air Act).

In order for an organization to effectively represent the "public interest," it must speak to the public it represents.

For such groups there is no distinction at the door between the advocacy and the solicitation, if indeed such distinction is ever possible. As the Court noted in *Thomas* v. *Collins*, 323 U. S. 516, at 534-535 (1945):

> "These rights of assembly and discussion are protected by the First Amendment. Whatever would restrict them, without sufficient occasion, would infringe its safeguards. The occasion was clearly protected. The speech was an essential part of the occasion, unless all meaning and purpose were to be taken from it. And the invitations, both general and particular, were parts of the speech, inseparable incidents of the occasion and of all that was said or done.
>
> * * * * *
>
> "Furthermore, whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning."

Regulation of the "solicitation" necessarily regulates the expression and association of which it is an inseparable and incidental part. The Schaumburg ordinance claims to regulate only "solicitation", but by its broad scope it also regulates political expression door-to-door.

"The charitable ordinance" requires, in those provisions before this Court, satisfactory proof that at least 75% of the proceeds of solicitation go to non-designated "program"; conversely, it requires that no more than 25% go to designated expenses:

> "(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such pur-

poses, the following items shall not be deemed to be used for the charitable purpose of the organization, to wit:

(1) Salaries or commissions paid to solicitors,

(2) Administrative expenses of the organization, including but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

"For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)" Schaumburg Municipal Code, Section 22-20(g).

The ordinance places a limit on the amount of money (25%) an organization may spend on pay for its door-to-door representative or the administrative expenses incident to that door-to-door activity.[5] In some organizations, such as CBE, the same person advocates the political cause door-to-door and asks for money. For those organizations the present ordinance is a direct limitation on expenditures for political expression at the door.[6] Those organizations which emphasize advocacy and minimize request-

5. The Seventh Circuit was greatly concerned about what would be considered "administrative expenses" under 22-20(g). They concluded all expenses of an organization would be excluded. Slip Opinion pp. 8-9. CBE believes this provision gives the Village substantial discretion to bar an organization by excluding any desired expenses as not "charitable program". However, even in its most restrictive sense, this provision would exclude all expenses associated with the door-to-door activity.

6. The Court noted in *Buckley* v. *Valeo*, 424 U. S. 1, 20 at n. 20, that a full page advertisement in a metropolitan daily paper ran nearly $7,000.00 in 1975. This may preclude many small groups from presenting their viewpoint to the public in any manner but door-to-door.

ing money may find that their "expenses" exceed their donations. Or, unpopular causes may find their contributions barely cover the administrative expenses associated with spreading their message to the public. For those groups this ordinance is a complete bar.

This Court has recognized the necessity of financial expenditures for political expression, and the effect of limitations on those expenditures. In *Buckley* v. *Valeo*, 424 U. S. 1 at 19 (1976) the Court stated:

> "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs." (Footnote omitted.)

Limitations on expenditures for political expression were stricken as violative of the First Amendment in that case, *Buckley, supra* at 57, regardless of their effects:

> "The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people —individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign."

Here, the Village of Schaumburg has determined that spending more than 25% of the organization's funding on expenses for door-to-door political advocacy is not only wasteful and unwise; it is the basis for a prior restraint of speech in Schaumburg.

Government does not have the power to command that "charitable organizations" stick to the business of "charitable purpose" when addressing the public, especially in the area of political

expression. As the Court noted in *First National Bank of Boston* v. *Belotti,* 435 U. S. 765, 785 (1978):

> "If a legislature may direct business corporations to 'stick to business', it also may limit other corporations-religious, charitable, or civic-to their respective "businesses" when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment." (Footnote omitted)

C. There Is No Conflict Among the Circuits on the Measure of Protection Accorded Door-to-Door Public Advocacy for Social Change

Petitioners argue that the decision below is in conflict with a decision from the Fifth Circuit. The Fifth Circuit case involved a conceptually different ordinance and an entirely different type of organization which did not purport to engage in political expression. No conflict exists because of the difference in factual situations and the limited scope of that Court's utterance.

The Fifth Circuit case involved an organization that conducted the annual "March of Dimes" fund drive. As described in the District Court opinion, *National Foundation* v. *Fort Worth,* 307 F. Supp. 177, 181-2 (D. C. Tex. 1967), this fund drive was solely to raise money, with no dissemination of ideas, information or advocacy. The case predates this Court's holdings in *Bigelow* v. *Virginia,* 421 U. S. 809 (1975) (notion of unprotected commercial speech all but passed from the scene), and *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council,* 425 U. S. 7, 48 (1976) (constitutional protection for the flow of commercial information of interest to the public).

The percentage limitation on expenditures for charitable purposes in the Fort Worth ordinance provided for due process appeal and hearing to show that the percentage limitation ought not apply to a specific organization. The Schaumburg ordinance provides no due process appeal procedures, nor allows any other deviation from the percentage limitation as defined by the ordi-

nance. The Fifth Circuit found it unnecessary to invoke a First Amendment standard of scrutiny but cautioned that:

> "a fixed percentage limitation on the cost of solicitation might be undesirable and inappropriate if applied to *all types of charitable organizations.* What may be proper in one situation may not be so in other situations. The ordinance before us does not imply a fixed standard . . ." [Emphasis added] *National Foundation* v. *Fort Worth,* 415 F. 2d 41, 46 (5th Cir. 1969), *Cert. denied* 396 U. S. 1040 (1970).

Nothing in *National Foundation, supra,* or *Hynes* v. *Mayor of Oradell,* 425 U. S. 610 (1976), supports a limitation on expenditures for door-to-door activity by charitable organizations engaged in political expression and advocacy for social change.

While the Fifth Circuit has not expressly ruled on the constitutionality of such an expense limitation on door-to-door political advocacy, a district court in the Fourth Circuit has. In *Carolina Action* v. *Pickard,* 420 F. Supp. 310 (W. D. N. C. 1976), an ordinance denying a permit to canvass if the cost of collection exceeded 25 percent of the amount raised was held unconstitutionally overbroad and vague as applied to an organization's canvass devoted to political purposes. The developing law in the Tenth Circuit also seems to be in accord. See *Swearson* v. *Meyers,* 455 F. Supp. 88 (D. C., Kan., 1978).

The Circuits appear to agree that a fixed percentage limitation which restrains the door-to-door activity of organizations engaging in political advocacy for social change is invalid. Neither the decision below nor the Fifth Circuit decision conflict with this principle. The Seventh Circuit recognized that certain activities within the scope of "the charitable ordinance", door-to-door advocacy for social change, deserve substantial protection. Appropriately they invoked the scrutiny the First Amendment requires of such prior restraints.

CONCLUSION

The solicitation ordinance in this case extends, in a vague and overbroad manner, into the area of door-to-door advocacy for social change; within that area it imposes a substantial restriction on expenditures for political expression in direct contravention of *Buckley* v. *Valeo, supra,* and *Bellotti, supra.* Groups that desire to seek public support, but do not meet the restrictive limitations on expenditures, are precluded from their door-to-door activity even where residents desire to hear the message. This goes far beyond reasonable time, place and manner regulation. For the foregoing reasons the respondents respectfully submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EDWARD W. OSANN, JR.
One IBM Plaza—4600
Chicago, Illinois 60611

BILL FORCADE
ROBERT GOLDSMITH
THOMAS CRAWFORD
CITIZENS FOR A BETTER ENVIRONMENT
Suite 2610
59 East Van Buren
Chicago, Illinois 60605
(312) 939-1530
Attorneys for Respondent

March 1979

APPENDIX A

UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CITIZENS FOR A BETTER ENVIRONMENT, An Illinois Not-for-Profit Corporation, LARRY A. HOELLWARTH, *Plaintiffs,*

vs.

VILLAGE OF SCHAUMBURG, ILLINOIS, MARTIN J. CONROY, HERBERT AIGNER, AL LARSON, NELS HORNSTROM, RAYMOND LEBEAU, JAMES ROGERS and EDWARD OLSEN, *Defendants.*

No. 76 C 470

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Now come the Plaintiffs, Citizens for a Better Government, an Illinois Not-for-Profit Corporation, and Larry A. Hoellwarth, by their Attorney, Michael R. Berman, and complaining of the Defendants, Village of Schaumburg, Illinois, Martin J. Conroy, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen.

JURISDICTION

1. Jurisdiction of this Court is invoked under Section 1 of the Fourteenth Amendment to the Constitution of the United

States, Title 28, United States Code, Sections 1331, 1343(3) and 1651, and Title 42 United States Code, Sections 1983 and 1988.

2. The amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs.

PARTIES

3. The Plaintiff, Citizens for a Better Environment (herein referred to as "CBE") is an Illinois Not-for-Profit Corporation with its principal place of business in the City of Chicago, County of Cook and State of Illinois. It was organized for the purpose, among others, of protecting, maintaining, and enhancing the quality of the Illinois environment. It is registered and in good standing with the Illinois Attorney General's Charitable Trust Division and has been afforded tax-exempt (as well as tax-deductible) status by the United States Internal Revenue Service. That incident to its purpose, CBE employs "canvassers" who are engaged in door-to-door activity in the Chicago metropolitan area, endeavoring to distribute literature on environmental topics and answer questions of an environmental nature when posed; solicit contributions to financially support the organization and its programs; receive grievances and complaints of an environmental nature regarding which CBE may afford assistance in the evaluation and redress of these grievances and complaints. This canvassing procedure is also an effective means of making the public aware of CBE as a source of assistance in the event that problems of an environmental nature arise in the future.

4. That the Plaintiff, Larry A. Hoellwarth, is an employee of CBE, and he devotes his full time to those duties. He is compensated in the form of wages for such service, which he depends upon for his livelihood. His duties include the direct responsibility for the canvassing operations of CBE, and his reputation depends, at least in part, upon the success of these canvassing operations.

5. That the Defendant, Village of Schaumburg, Illinois, is a Corporation, duly created pursuant to Illinois law.

6. That the Defendants, Herbert Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen (hereinafter referred to as "The Schaumburg Village Board"), are the duly elected trustees of the Village of Schaumburg, Illinois.

7. That the Defendant, Martin J. Conroy, is the duly appointed Chief of Police for the Village of Schaumburg, Illinois.

Count I

FACTS

8. That the Defendant, Village of Schaumburg, Illinois, has enacted a solicitation ordinance on March 12, 1974, No. 1052, attached as Exhibit A and made a part hereof, that requires nonprofit organizations to submit a written application to the Village Clerk in order to receive a permit.

9. That this ordinance was issued to CBE on November 15, 1977, by the Village Clerk's Office with the instruction that this is the ordinance under which nonprofit organizations must register.

10. That the defendants filed with their answer a section of the village code of Schaumburg, Chapter 22, §§ 22-1 - 22-24, attached as Exhibit B and made a part hereof, which defendants stated is in full force and effect.

11. That Chapter 22 of the Schaumburg code consists of Ordinance 1103 which was attached to CBE's original complaint and ordinance 1052 which was referred to in CBE's original complaint, and the only differences between the ordinances and their codification are insignificant.

12. That under ordinance 1052 and/or the code, Chapter 22, §§ 22-1 - 22-24, a charitable organization must apply to

the village clerk for a permit before it is allowed to solicit contributions door-to-door.

13. That the Village Board issues the permit if all requirements of the ordinance and/or the code have been met.

14. That CBE has been requesting permission to canvass from the Village of Schaumburg since April 1973.

15. That Schaumburg received a final request for solicitation dated January 22, 1976.

16. That all requests have been denied.

17. That notwithstanding the said registration ordinance and the Village code, the Schaumburg Village Board, acting without legal authority, has arbitrarily and capriciously denied Plaintiffs' application for a permit.

18. Plaintiffs have applied for such permits although they have not and do not admit the validity of requiring permits for the operation of a charitable organization nor for the exercise of the constitutionally protected freedoms, privileges and immunities.

19. That such refusal by Schaumburg was without good cause shown and without affording Plaintiffs herein a hearing thereon.

20. That each ordinance, and specifically Section Three of Ordinance 1052 and Section 22-20 of Chapter 22 are so strict, odious and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization"—as to be in violation of Plaintiffs' constitutional rights.

21. That on information and belief the Schaumburg Village Board does not uniformly enforce the 75% test and has granted permits to other charities who have failed to meet the test.

22. That on information and belief, other charitable organizations are not made to submit the unreasonable information demanded by the ordinance and/or the code, and therefore Plaintiffs' rights to equal protection of the laws and to due process have been violated.

23. That by reason of such refusal, Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, Illinois, should Plaintiffs seek to exercise their rights to canvass.

24. That by reason of their official positions, said Defendants, and each of them were cloaked with authority over Plaintiffs herein and under which authority, performed all of the acts or omissions herein alleged.

25. That at all times heretofore alleged, the Defendants, and each of them were acting pursuant to codes, statutes, regulations, ordinances, customs and usages of the State of Illinois, their respective municipalities, and under Color of Law.

26. That by reason of the acts or omissions of the Defendants as aforesaid alleged, the Plaintiffs were and are further being subjected to a deprivation of their right to free speech, to freedom of association, and to access to the Courts, thus depriving them of equal protection of the Laws and further depriving them of life, liberty and property without due process of Law, and further depriving individual Plaintiffs of rights, privileges and immunities, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

27. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful acts of the Defendants unless relief issues from this Court.

28. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court enter a declaratory judgment declaring the action of the Trustees of the Village of Schaumburg, Illinois, denying CBE's request to conduct a solicitation drive in the Village of Schaumburg, Illinois, to be without authority, illegal, void, and in volation of Plaintiffs' rights.

B. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them prohibiting the harassment of the Plaintiffs and their solicitors

during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

C. That this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional and that the Defendants, and each of them, be permanently enjoined from such enforcement.

D. That such injunction issue without bond for good cause shown.

E. For such other and further relief as this Court deems just and reasonable under the circumstances.

Count II

29. Plaintiffs reallege Paragraphs Eight (8) and Nine (9) of Count I.

30. That ordinance no. 1052, enacted on March 12, 1974, attached as Exhibit A and made a part hereof, purports to prohibit the seeking to obtain donations of money by a person without first having obtained a permit issued at the arbitrary discretion of the Schaumburg Village Board.

31. That said ordinance, and specifically Section Three thereof, is so strict, odious, and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purpose of the organization" —as to be violation of Plaintiffs' constitutional rights.

32. That such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts as guaranteed them by the First Amendment to the Constitution of the United States and as applied by the Fourteenth Amendment to the Constitution of the United States.

33. That the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg should Plaintiffs seek to exercise their right to canvass.

34. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful ordinance unless relief issue from the Court.

35. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them, prohibiting the harassment of Plaintiffs and their solicitors during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

B. This this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional, and that the Defendants, and each of them, be permanently enjoined from such enforcement.

C. That such injunction issue without bond for good cause shown.

D. For such other and further relief as this Court deems just.

Count III

36. Plaintiffs reallege Paragraph Ten (10) of Count I.

37. That Chapter 22, §§ 22-1 - 22-24, of its Village Code attached as Exhibit B and made a part hereof, purports to prohibit the seeking to obtain donations of money by a person without first having obtained a permit issued at the arbitrary discretion of the Schaumburg Village Board.

38. That said ordinance, and specifically Section Three thereof, is so strict, odious, and vague in requiring unreasonable information and criteria—including "Satisfactory proof that at

least seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purpose of the organization" —as to be in violation of Plaintiff's constitutional rights.

39. That such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts as guaranteed them by the First Amendment to the Constitution of the United States and as applied by the Fourteenth Amendment to the Constitution of the United States.

40. That the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg should Plaintiffs seek to exercise their right to canvass.

41. That the Plaintiffs' interests have been, and will continue to be irreparably harmed, adversely affected and aggrieved by the foregoing unlawful ordinance unless relief issue from the Court.

42. That Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. That this Honorable Court issue a temporary and permanent injunction against the Defendants, and each of them, prohibiting the harassment of Plaintiffs and their solicitors during or in furtherance of their lawful rights to solicit and canvass in the Village of Schaumburg, Illinois.

B. That this Honorable Court determine the local solicitation ordinance unconstitutional or unconstitutional as applied to Plaintiffs, and that the Court declare that the actions of the Defendants in enforcing such law or ordinance are unconstitutional, and that the Defendants, and each of them, be permanently enjoined from such enforcement.

C. That such injunction issue without bond for good cause shown.

D. For such other and further relief as this Court deems just.

CITIZENS FOR A BETTER ENVIRONMENT
By: /s/ MICHAEL R. BERMAN
Michael R. Berman
Its Attorney

Dated: December 2, 1977

MICHAEL R. BERMAN, ESQ.
59 East Van Buren, Suite 2610
Chicago, Illinois 60605
(312) 939-1530

APPENDIX B

UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

CITIZENS FOR A BETTER ENVIRONMENT, an Illinois Not-for-Profit Corporation, LARRY A. HOELLWARTH,
Plaintiffs,
vs.
VILLAGE OF SCHAUMBURG, ILLINOIS, MARTIN J. CONROY, HERBERT AIGNER, AL LARSON, NELS HORNSTROM, RAYMOND LEBEAU, JAMES ROGERS, and EDWARD OLSON,
Defendants.

No. 76 C 470

ANSWER TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Now Comes the Defendants, Village of Schaumburg, Martin J. Conroy, Herber Aigner, Al Larson, Nels Hornstrom, Raymond Lebeau, James Rogers, and Edward Olsen, Defendants herein by Jack M. Siegel, their attorney, and in answer to the Amended Complaint for Declaratory Judgment and Injunction heretofore filed herein, says as follows:

JURISDICTION

1. In answer to paragraph 1. Defendants deny that this Court has jurisdiction under Section 1 of the Fourteenth Amend-

ment to the Constitution of the United States, Title 28 United States Code, Sections 1331, 1343(3) and 1651, and Title 42 United States Code, Sections 1983 and 1988. Defendants further aver that there are no substantial federal questions involved herein and that there is no violation of the Fourteenth Amendment or any of the statutes enumerated in paragraph 1. by virtue of the ordinances of the Village of Schaumburg or the acts of the Defendants herein.

2. Defendants deny that the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs and aver that there are no allegations in said Amended Complaint to support said allegation of jurisdiction.

PARTIES

3. In answer to paragraph 3. the Defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and further aver that the facts alleged in said paragraph 3. even if true, would not be relevant or material to the issues in this cause with the exception that the Defendants state on information and belief that the CBE employs "canvassers" who solicit funds for the purported purposes of the organization.

4. In answer to paragraph 4. of said Amended Complaint Defendants say that they have no knowledge sufficient to form a belief as to the truth of said allegations and neither admit nor deny said allegations but demand strict proof thereof.

5. In answer to paragraph 5. Defendants admit that the Village of Schaumburg is a municipal corporation and further avers that it is a home-rule municipality under the Constitution of the State of Illinois.

6. In answer to paragraph 6. Defendants admit that Herbert Aigner, Al Larson, Raymond Lebeau and Edward Olsen are members of the Board of Trustees of the Village of Schaumburg.

Defendants aver that James Rogers and Nels Hornstrom are no longer members of the Board of Trustees of said Village.

7. Defendants admit the allegations of paragraph 7. of said Amended Complaint.

Count I

FACTS

8. In answer to paragraph 8. Defendants admit that the Village enacted Ordinance No. 1052 on March 12, 1974, but aver that said Ordinance has now been codified as part of the Schaumburg Village Code, adopted in 1975. Defendants aver that said Ordinance speaks for itself and requires a permit application to be made to the Village Clerk.

9. In answer to paragraph 9. Defendants say that they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but say that said allegations are irrelevant and immaterial for the reason that as appears on the face of said Complaint no demand or application for permit was made on or after November 15, 1977.

10. In answer to paragraph 10. Defendants admit that Section 22-1 - 22-14 regulate peddlers and solicitors in the Village of Schaumburg, but aver that the Plaintiff herein purports to be a charitable organization and is therefore subject to the provisions of Section 22-19 through Section 22-24 of the Schaumburg Village Code.

11. In answer to paragraph 11. of said Amended Complaint Defendants admit that present Chapter 22 of the Schaumburg Village Code consists of former Ordinance 1103 and former Ordinance 1052, but aver that Ordinance 1103 which was attached to CBE's original complaint does not purport to regulate a charitable organizations or organizations of the character of CBE.

12. Defendants admit the allegations of paragraph 12.

13. Defendants admit the allegations of paragraph 13.

14. In answer to paragraph 14. Defendants say that the CBE has heretofore requested permission to canvass in the Village of Schaumburg, but deny said request has persisted since April of 1973.

15. In answer to paragraph 15. Defendants say that they are unable to answer with certainty whether a final request for solicitation was dated January 22, 1976.

16. In answer to paragraph 16. Defendants admit that any requests have been denied, but aver that the Plaintiff, CBE has been informed of the requirements of the Ordinance and ask to submit documentation in support of their application in accordance with the Ordinance.

17. In answer to paragraph 17. Defendants deny that the Schaumburg Village Board has acted without legal authority or is arbitrarily and capriciously denied the Plaintiff's application for permit. Defendants say that the Village stands ready to issue a permit if the Plaintiff or any other applicant meets the requirements of the Village Code and avers that the acts of the Village Board have been in accordance with law and have not been arbitrary or capricious.

18. In answer to paragraph 18. Defendants aver that if Plaintiffs apply for such permits and meet the requirements of said Ordinances of the Village of Schaumburg, permits will be granted.

19. In answer to paragraph 19. Defendants deny that the refusal by Village of Schaumburg was without good cause shown and aver that good cause was the failure to comply with valid Ordinances of the Village of Schaumburg. Defendants further aver that no hearing was ever requested and that no hearing is required under the Ordinances of the Village of Schaumburg.

20. In answer to paragraph 20. Defendants deny that each Ordinance and specifically Section Three of Ordinance 1052

and Section 22-20 of Chapter 22 are so strict, odious or vague as to be in violation of Plaintiffs constitutional rights. Defendants further aver that said Ordinances and each and every provision thereof are in all respects a valid and constitutional exercise of a police power vested in the Village of Schaumburg under the constitution and laws of the State of Illinois.

21. In answer to paragraph 21. Defendants deny that the Village of Schaumburg Village Board does not uniformly enforce the provisions of the 75% test and say that said allegations are nothing but the inaccurate and totally unsupported conclusions of the pleader.

22. In answer to Paragraph 22. Defendants deny that other charitable organizations are not required to submit information demanded by the Ordinance and deny that the Plaintiffs rights to equal protection of the laws and due process have been violated.

23. In answer to paragraph 23. Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg. Defendants further aver however, that if Plaintiffs violate municipal ordinances, they as all other persons who violate the ordinances of the Village of Schaumburg will be prosecuted for such ordinance violations.

24. In answer to paragraph 24. Defendants say that the adoption of said Ordinance was undertaken pursuant to the authority vested in the corporate authorities of the Village of Schaumburg by the Constitution and Laws of the State of Illinois and further aver that the Defendants possess the authority vested in them as Trustees of the Village of Schaumburg.

25. In answer to paragraph 25. Defendants admit that all acts taken by them were taken pursuant to the authority vested in the Defendants and the Village of Schaumburg by the Constitution and Laws of the State of Illinois, but deny that said acts were merely under Color of Law and aver that all acts taken

were in full compliance with the valid constitutional provisions and statutes of the State of Illinois and the valid Ordinances of the Village of Schaumburg.

26. In answer to paragraph 26. Defendants deny each and every allegation of said paragraph 26. Defendants specifically deny that the Plaintiffs were and are further being subjected to a deprivation of their right to free speech, freedom of association, or to access to the Courts. Defendants deny that the Plaintiffs have been denied equal protection of the law or have been denied life, liberty and property without due process of law and deny that any Plaintiffs have been denied rights, privileges or immunities in violation of the Fourteenth Amendment.

27. In answer to paragraph 27. Defendants deny that the Plaintiffs interests have been or will continue to be irreparably harmed, adversely affected by any of the acts of the Defendants and further deny that there have been any unlawful acts of the Defendants.

28. Defendants deny the allegations of paragraph 28.

WHEREFORE, Defendants respectfully pray that this Honorable Court dismiss Count I of said Amended Complaint for failure to state a cause of action and for failure to set forth facts showing wherein this Court has jurisdiction to grant any relief requested.

Count II

29. In answer to paragraph 29. Defendants reallege the answers to paragraphs 8. and 9. of Count I.

30. In answer to paragraph 30. Defendants admit that said Ordinance 1052 requires a permit, but denies that said permit is issued at the arbitrary discretion of the Village Board and avers that the Village Board is without authority to deny a permit to any person or organization which meets the requirements of said Ordinance.

31. In answer to paragraph 31. Defendants deny that said Ordinance, specifically Section Three thereof, is so strict, odious

or vague as to be in violation of Plaintiffs constitutional rights and aver that said Ordinance and specifically Section Three thereof is in all respects a valid and constitutional exercise of the police power of the Village of Schaumburg granted pursuant to the Constitution and Laws of the State of Illinois. Defendants further aver that the standards set forth in said Ordinance are in all respects valid, specific and definite and are reasonably related to the objectives of the Ordinance.

32. In answer to paragraph 32. Defendants deny that said Ordinance and threat of enforcement constitutes a prior restraint upon, or an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, freedom of press, freedom of association and rights to access to the courts and deny that the Ordinance in any way violates the First Amendment to the Constitution of the United States or the Fourteenth Amendment to the Constitution of the United States.

33. In answer to paragraph 33. Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, but aver that in the event the Plaintiffs seek to violate the ordinances of the Village of Schaumburg they, like all other persons violating the ordinances of the Village of Schaumburg, will be prosecuted.

34. In answer to paragraph 34. Defendants deny that the Plaintiffs interests have been or will continue to be irreparably harmed or adversely affected or aggrieved by the foregoing ordinance and deny that said ordinance is unlawful.

35. In answer to paragraph 35. Defendants deny that the Plaintiffs have no adequate remedy at law.

WHEREFORE, Defendants respectfully pray that Count II of said Amended Complaint be dismissed for failure to state a cause of action and for failure to show wherein federal jurisdiction may properly be invoked.

Count III

36. In answer to paragraph 36. Defendants reallege the answer to paragraph 10. of Count I.

37. In answer to paragraph 37. Defendants admit that no solicitation to obtain donations of money may take place without first having obtained a permit as required by ordinance, but deny that the permit is issued at the arbitrary discretion of the Schaumburg Village Board. Defendants aver that all persons meeting the requirements of said ordinance are entitled to permits and are so issued permits by the Village of Schaumburg.

38. In answer to paragraph 38. Defendants deny that said ordinance and specifically Section Three is so strict, odious or vague as to be in violation of the Plaintiffs constitutional rights and aver that said ordinance is in all respects a valid and constitutional exercise of the police power vested in the Village of Schaumburg by the Constitution and Laws of the State of Illinois.

39. In answer to paragraph 39. Defendants deny that such ordinance and the threat of enforcement constitutes a prior restraint upon, and an unreasonable interference with the exercise of Plaintiffs' rights to freedom of speech, press and association and access to the courts and deny the allegations of paragraph 39. and specifically deny that said ordinance violates in any manner the First or Fourteenth Amendment to the Constitution of the United States.

40. In answer to paragraph 40. Defendants deny that the Plaintiffs are under imminent threat of arrest and prosecution by the Chief of Police of the Village of Schaumburg, but aver that if Plaintiffs like all other persons, violate the ordinances of the Village of Schaumburg, they will be subject to prosecution.

41. Defendants deny the allegations of paragraph 41. and specifically deny that the Plaintiffs' interests have been or will continue to be irreparably harmed, adversely affected or

aggrieved by said ordinance and deny that said ordinance is unlawful.

42. Defendants deny that the Plaintiffs have no adequate remedy at law.

43. As affirmative defense the Plaintiffs say on information and belief that the CBE is primarily devoted to raising funds for the benefit and salary of its employees and that its charitable purposes are negligible as compared with the primary objective of raising funds. Defendants further say and information and belief that more than 60% of the funds collected have been spent for benefits of employees and not for any charitable purposes.

In support of said allegations the Defendants submit herewith as Exhibit A an article appearing in the Suburban Trib for Southwest Cook County on Wednesday, November 10, 1976.

44. As further and affirmative defenses the Defendants say that the ordinances of the Village of Schaumburg relating to charitable organizations and the solicitation of funds are in all respects valid and constitutional exercises of a legislative authority vested in the President and Board of Trustees by the Constitution and Statutes of the State of Illinois.

45. Defendants further aver that there is no absolute right under the Federal Constitution to enter upon the private premises of another and knock on a door for any purposes and the police power permits reasonable regulation of public safety. That door to door canvassing and solicitation are not immune from regulation under the State's police power whether the purpose of the regulations is to protect from danger or to protect the peaceful enjoyment of the home. That the ordinances of the Village of Schaumburg are so directed.

WHEREFORE, it is respectfully prayed that Count III of said Complaint be dismissed for failure to state a cause of action and for failure to set forth facts sufficient to envoke the jurisdiction of the Federal Courts.

VILLAGE OF SCHAUMBURG, et al.
Defendants
By JACK M. SIEGEL,
Their Attorney

APPENDIX C

Peddlers and Solicitors

CHAPTER 22.

PEDDLERS AND SOLICITORS.

For state law as to transient merchants generally, see Ill. Rev. Stat., ch. 121½, §§ 158 to 165. As to itinerant merchants by vehicle, see Ill. Rev. Stat., ch. 121½, §§165.1 to 165.17.

As to citations in lieu of complaint for certain offenses, see §§ 12-2 to 12-5 of this Code. As to licenses generally, see ch. 17. As to use of noise devices on vending vehicles, see § 18-4. As to noises generally, see § 20-41. As to weights and measures generally, see ch. 32.

Article I. In General.

§§ 22-1 to 22-5. Reserved.

Article II. For Profit Peddlers and Solicitors.

§ 22-6. Definitions.
§ 22-7. Licenses—Required.
§ 22-8. Same—Applications; disposition of fee if license refused on moral grounds; registration book.
§ 22-9. Same—Investigation and certification of applicant.
§ 22-10. Same—Fees.
§ 22-11. Same—Revocation.
§ 22-12. Fraud; sale of goods, etc., not covered by license.
§ 22-13. Hours of operation.
§ 22-14. Limitations on parking.
§ 22-15. Notices of refusal of invitation.
§ 22-16. Conduct.
§ 22-17. Erection of signs at village limits.
§ 22-18. Penalties.

Article III. Charitable Organizations.

§ 22-19. Definitions.
§ 22-20. Permits—Required; contents of application.
§ 22-21. Same—Submission and verification of applications; issuance.
§ 22-22. Same—Fee.
§ 22-23. Indicted or convicted felons or solicitors.
§ 22-24. Hours; entering premises posted for "no soliciting."

Article I. In General.

Secs. 22-1 to 22-5. Reserved for future legislation.

Article II. For Profit Peddlers and Solicitors.

Sec. 22-6. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Peddler. Any person who, going from place to place, shall at retail sell, offer for sale, sell and deliver, barter or exchange any goods, wares, merchandise, wood, oil, fish, fruits, vegetables, country produce or any other article or thing whatsoever or any service from a vehicle or otherwise. It shall not include a serviceman who, responding to a prior call, sells replacement merchandise.

Solicitor. Any person who, going from place to place, without prior appointment or pre-arrangement with the customer, shall take orders for future delivery at retail of any merchandise or other article or thing, or any service. (Ord. No. 1103, § 1.)

Sec. 22-7. Licenses—Required.

No person shall engage in the business of a peddler or solicitor within the village without first having obtained a license therefor as provided in this article. (Ord. No. 1103, § 2.)

Sec. 22-8. Same—Applications; disposition of fee if license refused on moral grounds; registration book.

An application for a peddler's or solicitor's license shall be made to the village collector in conformity with the general requirements of this Code and other village ordinances relating to applications for licenses. Such applications shall also set forth the number of vehicles, if any, intended to be operated, the kind of merchandise to be peddled or offered for order, the permanent address of the applicant, the name of the partnership, corporation or proprietorship for whom the applicant works, the name of the supervisor of the applicant, the telephone number of the parent firm, and cities of previous solicitation; and further, whether such applicant has ever had a revocation of any peddler's or solicitor's licenses, whether he has ever been convicted for a violation of similar peddlers and solicitors ordinances, whether he has ever been arrested or convicted of a misdemeanor or felony, and if so, why. Each application shall be accompanied by the annual fee as hereinafter prescribed. Should the application be refused because the applicant upon investigation is not found to be a person of good and moral character and reputation, as based on answers given on the license application, the license fee shall be deemed to have covered the cost of investigation and shall not be returned to the applicant. The applicant shall register in a book provided for such purpose in the office of the village collector. (Ord. No. 1103, § 3.)

Sec. 22-9. Same—Investigation and certification of applicant.

The chief of police shall, upon request from the village collector, make or cause to be made an investigation to determine the character and reputation of the applicant. No license shall be issued to any applicant who is not found to be a person of good character and reputation or to any firm, corporation, partnership or association which is not represented in the village by a person found to be of good character and reputation. The chief

of police shall certify to the village collector the issuance or denial of a permit under the provisions of this article within thirty days of the application. (Ord. No. 1103, § 4.)

Sec. 22-10. Same—Fees.

The annual fee for a peddler's or solicitor's license shall be ten dollars; except, that if a peddler or solicitor uses a vehicle other than a private automobile in his business, the annual fee shall be twenty-five dollars per vehicle. (Ord. No. 1103, § 5.)

Sec. 22-11. Same—Revocation.

Any such license may be revoked by the village president because of any violation of this article or of any other provision of this Code or other ordinances of the village or of any state or federal law or whenever the registrant shall cease to possess the qualifications and character required in this article for the original registration. (Ord. No. 1103, § 12.)

Sec. 22-12. Fraud; sale of goods, etc., not covered by license.

It shall be unlawful for any peddler or solicitor to cheat, deceive or fraudulently misrepresent, whether through himself or through an employee, while acting as a peddler or solicitor in the village or to barter, sell or peddle any goods, merchandise or wares other than those specified in his application for a license. (Ord. No. 1103, § 6.)

Sec. 22-13. Hours of operation.

No soliciting or peddling shall be permitted before the hour of 9:00 A.M., or after the hour of 6:00 P.M. within the village, and no peddling or soliciting shall be conducted on Sundays; provided, that vending of food from trucks on the public ways shall be on all days between sunup and sunset. (Ord. No. 1103, § 7.)

Sec. 22-14. Limitations on parking.

No peddler or solicitor may park on public property in a given place for longer than fifteen minutes after the time of his sale or solicitation of an order at that place, and after the expiration of such fifteen minutes, he shall move on to a different location which is at least one village block away. (Ord. No. 1103, § 8.)

Sec. 22-15. Notices of refusal of invitation.

Notice of the determination of the occupant's refusal of invitation to any solicitors or peddlers shall be given in the following manner:

A weatherproof card, at least three inches by four inches in size, shall be exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

"NO SOLICITORS OR PEDDLERS INVITED."

The letters shall be at least one-third inch in height. For the purpose of uniformity, the cards shall be provided by the village collector to persons requesting, at the cost thereof.

Such card so exhibited shall constitute sufficient notice to any solicitor or peddler of the determination of the occupant of the residence of the information contained thereon. (Ord. No. 1103, § 9.)

Sec. 22-16. Conduct.

It shall be the duty of every solicitor or peddler, upon going onto any premises in the village upon which a residence as herein defined is located, to first examine the notice provided for in this article, if any is attached, and be governed by the statement contained on the notice. If the notice states "no solicitors or peddlers invited," then the solicitor or peddler, whether registered or not, shall immediately and peacefully depart from the premises.

Any solicitor or peddler who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant. (Ord. No. 1103, § 10.)

Sec. 22-17. Erection of signs at village limits.

The director of public works is hereby directed to post appropriate signs at the limits of the village with the following language;

"SOLICITORS AND PEDDLERS MUST BE LICENSED AND REGISTERED. APPLY AT SCHAUMBURG MUNICIPAL BUILDING, 101 SCHAUMBURG COURT."

Sec. 22-18. Penalties.

Any person violating the provisions of this article shall be fined not more than five hundred dollars for each such offense. (Ord. No. 1103, § 13.)

Article III. Charitable Organizations.

For state law as to solicitation of funds for charitable purposes, see Ill. Rev. Stat., ch. 23, § 5101 et seq.

Sec. 22-19. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

Charitable organization. Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Contribution. The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature. (Ord. No. 1052, § 2.)

Sec. 22-20. Permits—Required; contents of application.

Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The name and address of the person in charge of solicitation in the village.

(c) The names and addresses of all the persons who will solicit contributions in the village.

(d) The dates and times of day such solicitations are to be made and the geographic area within the village wherein such solicitation shall be conducted at a particular time and day.

(e) A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

(f) Satisfactory proof that the organization is a tax-exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).

(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit;

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

Sec. 22-21. Same—Submission and verification of applications; issuance.

All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place. (Ord. No. 1052, § 7.)

Sec. 22-22. Same—Fee.

Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of ten dollars. (Ord. No. 1052, § 6.)

Sec. 22-23. Indicted or convicted felons as solicitors.

It shall be unlawful for any charitable organization to utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony. (Ord. 1052, § 5.)

Sec. 22-24. Hours; entering premises posted for "no soliciting."

No permit issued under the provisions of this article shall permit solicitation before the hour of 9:00 A.M. and after the hour of 6:00 P.M., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "no solicitors or peddlers invited." (Ord. No. 1052, § 4.)

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, ET AL.,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S BRIEF.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioner.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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IN THE

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S BRIEF.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 590 F. 2d 220 (1978) and appears as Appendix A to the Petition for Writ of Certiorari filed herein.

The opinion of the United States District Court for the Northern District of Illinois is reprinted as Appendix B to the Petition for Writ of Certiorari filed herein.

JURISDICTION.

The judgment of the Circuit Court of Appeals for the Seventh Circuit was entered on December 1, 1978. The Petition for Writ of Certiorari was docketed on February 28, 1979. The Petition for Writ of Certiorari was granted on April 23, 1979. The Petition for Writ of Certiorari was filed in accordance with 28 U. S. C. § 2101. The jurisdiction of this court is invoked pursuant to the provisions of 28 U. S. C. § 1254.

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED.

This case involves the First and Fourteenth Amendments of the Constitution of the United States, and Chapter 22, Article III of the Schaumburg Village Code relating to charitable organizations. The relevant provisions are set forth in an appendix to this brief.

QUESTIONS PRESENTED FOR REVIEW.

1. Is Section 20(g) of Chapter 22 of the Schaumburg Village Code, which requires that 75 percent of the proceeds of charitable solicitations be used directly for the charitable purposes of the organization, unconstitutional either on its face or as applied?

2. Does a municipality have the right to prohibit purported charitable solicitations when the soliciting organization fails to demonstrate that at least 75 percent of its receipts are utilized for its charitable purposes?

3. Were the respondents entitled to a summary judgment holding that Section 20(g) of the ordinance of the Village of Schaumburg regulating charitable solicitations was invalid?

STATEMENT OF THE CASE.

This is a complaint for declaratory judgment and injunction initially brought by an organization known as Citizens For a Better Environment and two of its officers against approximately twenty municipalities in the Chicago metropolitan area. The complaint challenged the validity of the various ordinances of the municipalities which regulate solicitation for funds by organizations within their corporate limits. The respondents filed a motion for summary judgment against all the municipalities including the petitioner, Village of Schaumburg. Certain of the municipal defendants were dismissed by agreement and the District Court found provisions of various other ordinances to be unconstitutional.

An amended complaint was filed against the petitioners, the Village of Schaumburg, a home rule municipality located in Cook County, Illinois, its Village Board and Police Chief. (A5)

The Village had adopted an ordinance regulating charitable organizations within the corporate limits of the Village. (A22) The ordinance provided a framework for the issuance of permits to charitable organizations desiring to solicit funds in the Village including various standards defining the charitable organization to be regulated. The only provision of the ordinance challenged by the respondents was a section which required, in effect, that at least 75 percent of the proceeds of the solicitations by the organization regulated be used directly for charitable purposes of the organization.

That section, designated 20(g) of Chapter 22 of the Village Code, required:

> "Satisfactory proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
>
> (1) Salaries or commissions paid to solicitors;
>
> (2) Administrative expenses of the organization, including, but not limited to, salaries, attorney's fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.
>
> For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five percent of the funds collected are utilized directly and solely for the charitable purpose of the organization."

The respondents refused to submit the information necessary to satisfy this requirement and were denied a permit. It was admitted that if all the conditions of the ordinance were met, the Village Board had no discretion and, by the terms of the ordinance, was required to issue such permit.

The amended three count complaint against the Village and its Board of Trustees and Police Chief alleged that jurisdiction was invoked under Section 1 of the Fourteenth Amendment, Sections 1331, 1343(3), and 1651 of Title 28, and 1983 and 1988 of Title 42 of the United States Code. (A5)

Count I identified the plaintiffs and defendants and described the ordinance in question. It alleged that CBE had requested permission to canvass and their final request for solicitation had been denied. The complaint then alleged that Section 22-20, requiring satisfactory proof that at least 75 percent of such solicitations be used directly for charitable purposes, was in violation of the plaintiffs' constitutional rights in that the plaintiffs were being subjected to a deprivation of their rights to free

speech, to freedom of association, and to access to the courts. It was alleged that they were deprived of equal protection of the laws, life, liberty and property without due process of law, and of their rights, privileges and immunities in violation of the Fourteenth Amendment. (A9)

Count II alleged that the ordinance requiring a permit was so strict, odious, and vague as to be in violation of the plaintiffs' constitutional rights and was unreasonable interference in the exercise of the plaintiffs' rights to freedom of speech, freedom of press, freedom of association, and their rights to access to the courts as guaranteed by the First and Fourteenth Amendments. (A10)

Count III alleged that the ordinance and threat of enforcement constitutes a prior restraint and unreasonable interference with the exercise of plaintiffs' rights to freedom of speech, freedom of press, freedom of association, and rights to access to the courts as guaranteed by the First and Fourteenth Amendments. (A12)

The Village, in its answer, alleged it had no knowledge sufficient to form a belief with respect to the character of the plaintiffs, except that they have canvassers who solicit funds for the organization. The Village denied the conclusions of the amended complaint and denied that the Village Board acted without legal authority. It was averred that if the plaintiffs applied for a permit and met the requirements of the ordinance, permits would be granted. The Village denied that the ordinance was so strict, odious or vague as to be in violation of the plaintiffs' constitutional rights and averred that the ordinance was a valid and constitutional exercise of the police power vested in the Village. (A29)

The Village denied that the permit is issued at the arbitrary discretion of the Board and that the ordinance was so strict, odious or vague as to be in violation of the plaintiffs' constitutional rights. The Village denied that the ordinance was unconstitutional or constituted a prior restraint upon, and an

unreasonable interference with the plaintiffs' rights to freedom of speech, press and association and access to the courts. (A31)

As affirmative defenses, it was alleged on information and belief that CBE is primarily devoted to raising funds for the benefit and salary of its employees and that its charitable purposes are negligible as compared with the primary objective of raising funds. More than 60% of the funds collected have been spent for the benefit of employees and not for any charitable purposes. (A33)

In support of its allegations, the Village submitted certain newspaper articles and further averred that there was no absolute right under the Constitution to enter upon the private premises of another and knock on the door for any purpose and that the police power permits reasonable regulation for public safety. (A34, 35, 36, 37)

The plaintiffs' motion for summary judgment was based on the ground that there was no genuine issue as to any material fact and the plaintiffs' were entitled to judgment as a matter of law. It was supported by an affidavit of Larry A. Hoellwarth, an employee of Citizens For A Better Environment, who is involved in the direct supervision of the canvassing program. His affidavit alleged that the organization was incorporated as a not-for-profit corporation in 1971 and that it was in good standing with the Charitable Trust Division of the office of the Illinois Attorney General and has been granted tax-exempt and tax-deductible status by the United States Internal Revenue Service. The affidavit stated that CBE employs a staff of canvassers who are screened, trained and observed prior to hire, and that following their training each canvasser is registered with the office of the Attorney General. That CBE is supported almost entirely by small contributions from individual citizens and that door-to-door canvassing is the single, most important source of funds. The affidavit set forth that in the door-to-door canvassing representatives distribute informative

pamphlets on environmental subjects and also accept pollution complaints. (A40)

In its answer to the motion for summary judgment, the Village stated that the motion was improper because there were genuine issues as to material facts and the complaint failed to set forth facts wherein the plaintiffs had been denied any federally protected constitutional or statutory rights and the allegations of the complaint were merely the unsupported conclusions of the pleader. (A42)

SUMMARY OF ARGUMENT.

I.

The ordinance in question here is neither unconstitutional on its face nor as applied. There is no absolute right under the Federal Constitution to enter on the private premises of another and knock on his door for any purpose. The police power on the State and Municipal level permits the type of reasonable regulation present here. The provisions in question are not unconstitutionally vague but are clear standards which, if met, entitle an applicant to a permit to solicit for charitable purposes. There is no lack of standards in the ordinance, nor is there a vesting of unbridled discretion in municipal officials in the issuance of permits which would violate constitutional guanrantees.

The balancing of the First Amendment rights of the respondent against the right of citizens to be left alone in the free enjoyment of their homes does not require the uncontrolled type of solicitation sought here. The Court of Appeals recognized that the ordinance was not necessarily unreasonable on its face as to some types of charitable organizations but it failed to recognize that holding the ordinance unconstitutional here opens the door to unrestricted solicitation in the name of charity by organizations which may, in fact, be practicing fraud or deceit on the unwitting public.

II.

There is an important municipal and state interest at stake in protecting the public from fraud, crime and undue annoyance by door-to-door solicitation on private property by alleged charitable organizations which, in fact, devote a substantial portion of their revenues to other than charitable purposes.

This court has never announced a rule that solicitation in the name of charity was beyond the scope of reasonable municipal regulation or that the public was not entitled to a truthful representation of the nature of the solicitation. The petitioners' ordinance is intimately related to the articulated substantial governmental interests recognized by this court in the regulation of such solicitation. The ordinance sets forth specific standards which are not vague or unreasonable. The right of a municipality to protect its citizens from fraudulent and disruptive solicitation on private property represents a proper exercise of municipal police power. The First and Fourteenth Amendments do not give unbridled license to annoy and mislead under the guise of freedom of speech.

III.

The Trial Court erred in granting a motion for summary judgment. There were material issues of fact which prevented the granting of such motion. The granting of a motion for summary judgment is improper when inferences can be drawn from underlying facts which, when viewed in the light most favorable to the party opposing it, indicate the presence of material issues of fact. The Village was deprived of its opportunity to show that, in fact, the respondent was principally engaged in solicitation of funds for profit and was misusing the guise of environmental protection and free speech for its commercial gain.

The Court of Appeals specifically determined that it would not pass upon the reasonableness of the 75 percent requirement as applied to "more traditional charitable organizations," but it refused an inquiry as to the real nature of the respondent. The office of summary judgment is not to preclude a trial on the merits under these circumstances.

In its zeal to protect First Amendment rights, the Court of Appeals, as did the Trial Court, in fact denied to the Village the equally fundamentally right to a full and adequate trial on the merits. The ordinance of the Village of Schaumburg is constitu-

tional on its face. The plaintiffs have the burden of showing that the ordinance was unreasonable as applied. Their amended complaint failed to set forth facts which, even if proven, would overcome the presumption of validity.

The Trial Court erred in granting the motion for summary judgment and its error was compounded by the decision of the Court of Appeals which should be reversed.

ARGUMENT.

I.

SECTION 20(g) OF CHAPTER 22 OF THE SCHAUMBURG VILLAGE CODE REQUIRING 75% OF THE PROCEEDS OF CHARITABLE SOLICITATIONS TO BE USED DIRECTLY FOR THE CHARITABLE PURPOSES OF THE ORGANIZATION IS CONSTITUTIONAL.

This is a declaratory judgment action brought by the Respondent Citizens for a Better Environment against the Village of Schaumburg. Respondent seeks a declaration that the provisions of the Schaumburg ordinance requiring that charitable organizations seeking a permit to solicit must show that 75% of the funds solicited are used for charitable purposes are unconstitutional. The only substantive issue in this case is whether the 75% requirement violates the First Amendment. Although the trial court held the 75% requirement invalid on its face, the Court of Appeals recognized that the ordinance may be reasonable as applied to the more traditional charitable organizations, but held that the requirement on its fact was unreasonable when applied to an organization such as the Respondent. 590 F. 2d 220, 225 (CCA 7, 1978)

As we shall demonstrate below, we believe that the trial court erred in granting a motion for summary judgment; but it is also clear that as a matter of law the ordinance is both constitutional on its face and constitutional as applied to the Respondent.

It should be emphasized at the outset that although Section 20(g) of Chapter 22 is the only provision of the Schaumburg ordinance at issue here, that section is but a part of a comprehensive method of regulating both commercial and charitable peddlers and solicitors. The Village Code in Article II, Sections 22-6 through 22-18 regulate the activities of for-profit peddlers

and solicitors. Charitable solicitations are regulated by Article III, Sections 22-19 through 22-24.

Section 22-19 defines "charitable organizations" as well as "charitable purpose" and "contributions". (A22) Section 22-20 spells out the requirements for permits and the contents of the application. Section 22-20 further sets forth the standards which must be met including subparagraph (g) which is at issue here.

The fundamental right of municipalities to regulate the kind of solicitation here involved has long been recognized by this and inferior courts. This Court's opinion in *Hynes* v. *Mayor of Oradell*, 425 U. S. 619, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976) is a complete vindication of such a municipal right. See also *Breared* v. *City of Alexandria*, 341 U. S. 622, 95 L. Ed. 1233 (1951). Moreover, it is well established that a Village has a legitimate interest in protecting its citizens from fraud by solicitors who would use the funds collected for purposes other than those expressly or impliedly represented. It has a similar protective interest in identifying organizations where salaries paid are so large in relation to the services provided that the organization is actually a for-profit venture. *Citizens for a Better Environment* v. *Village of Schaumburg*, 590 F. 2d 220, 225; *National Foundation* v. *City of Fort Worth*, 415 F. 2d 41 (5th Cir. 1969), *cert. denied* 396 U. S. 1040, 90 S. Ct. 688, 24 L. Ed. 2d 684 (1970).

The question presented to the Court in this matter requires a balancing of alleged First Amendment rights against the equal compelling constitutional right of homeowners to be secure in the peaceful enjoyment of their property and the ability of municipal governments to protect that right. We suggest that contrary to the view of the Court of Appeals, the ordinance in question here is in all respects a valid exercise of the police power of the Petitioner Village. It is not impermissibly vague on its face or as applied. The summary judgment entered by the trial court precluded an investigation into the actual nature of the

Respondent organization. It is clear however that even if CBE is what it claims to be, an environmental protection organization, the provisions of the Schaumburg ordinance in question here do not deprive it of any constitutionally protected rights.

A. The Ordinance Is Valid Under the Police Power and Does Not Deprive the Respondent of Its First Amendment Rights.

The most recent authoritative decision with respect to the question presented is the opinion in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 48 L. Ed. 2d 243 (1976). That case involved the constitutionality of a borough ordinance which required that any person, including representatives of civic groups and organizations desiring to canvass or solicit for a recognized charitable cause or for a political campaign or cause, must notify the police department in writing for identification only.

The Court held that the ordinance in question was invalid because the ordinance's coverage was unclear, there being no explanation as to what was a "recognized charity"; what was meant by a "federal, state, county or municipal . . . cause" or what groups fell into the class of borough civic groups and organizations. The Court further held that the ordinance did not sufficiently specify what actions were necessary for compliance, there being no explanation as to what must be included in the notice or what the police considered sufficient as identification, and explicit standards were not provided for those who applied the ordinance.

However, the case is most significant for laying down certain basic propositions which are totally controlling in the case at bar. The thrust of *Oradell* is clearly that a municipality has the right to protect its citizens from crime and annoyance by regulating soliciting and canvassing and that there is no absolute right under the Constitution to make such solicitation. Although the ordinance in question in the *Oradell* case was held to be invalid, it was held invalid because of vagueness and lack of

standards. These defects are clearly not present in the Schaumburg ordinance. The Court specifically pointed out that:

> ". . . the court has consistently recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing. A narrowly drawn ordinance, that does not vest in municipal officials the undefined power to determine what message residents will hear, may serve these important interests without running afoul of the First Amendment." 425 U. S. 610, 616, 48 L. Ed. 2d 243, 251.

At 425 U. S. 619, 48 L. Ed. 2d 252 this Court went on to use language which is totally controlling in the case at bar, it said:

> "There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety. We cannot say, and indeed appellants do not argue, that door-to-door canvassing and solicitation are immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home. See Roman v. Post Office Dept., 397 U.S. 728, 735-738, 25 L.Ed. 2d 736, 90 S.Ct. 1484 (1970)."

The provisions which the Court found defective, included the phrase, "recognized charitable cause" and a "federal, state, county or municipal cause". It was also not clear in the ordinance what groups fell into the class of "Borough Civic Groups and Organizations" that the ordinance also covered. 425 U. S. 621, 48 L. Ed. 2d 243, 253. The ordinance in question also failed because it did not sufficiently specify what those within its reach had to do in order to comply.

The defects in the *Oradell* ordinance do not exist in the Schaumburg ordinance. The ordinance is absolutely and totally clear both with respect to the standards to be applied and the manner in which a permit is to be sought. Section 22-19 of the ordinance clearly defines a charitable organization. The provi-

sions of Section 22-20 explain the contents of the application and resolve any doubt as who or what organization is in fact covered by the ordinance in question.

The Court of Appeals for the Fifth Circuit has specifically held constitutional an ordinance which limited the cost of solicitation of charitable contributions within the city to 20% of the total receipts. *National Foundation* v. *City of Fort Worth,* 415 F. 2d 41 (1969), cert. denied, 396 U. S. 1040, 90 S. Ct. 688, 24 L. Ed. 684 (1970), the Court at page 45 said:

> "No constitutional right exists to make public solicitation of funds for charity. The reasonable regulation of charitable organizations is within a government's police power. Cantwell v. State of Connecticut, 310 U.S. 296, 304, 60 S.Ct. 900, 84 L.Ed. 1213; American Cancer Society v. City of Dayton, 1953, 160 Ohio St. 114, 114 N.E.2d 219; Gospel Army v. City of Los Angeles, 1945, 27 Cal.2d 232, 163 P.2d 704; Eye Dog Foundation v. State Board of Guide Dogs, supra, 63 Cal.Rptr. at 30, 432 P.2d at 726; City of Seattle v. Rogers, 1940, 6 Wash.2d 32, 106 P.2d 598, 130 A.L.R. 1498; Ex parte Williams, 1940, 345 Mo. 1121 ,139 S.W.2d 485, cert. denied Williams v. Golden, 311 U.S. 675, 61 S.Ct. 42, 85 L.Ed. 434; Ex parte White, 1935, 56 Okl.Cir. 418, 41 P.2d 488; Ex parte Dart, 172 Cal. 47, 155 P. 63 L.R.A. 1916D, 905, Ann.Cas. 1917D, 1127. In Cantwell, supra, the Supreme Court stated that:
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> > 'Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." 310 U. S. at 306-307, 60 S. Ct. 904.
>
> Since the solicitation of funds for charity may be the subject of state regulation, we now inquire whether the ordinance adopted by the City to regulate public solicitation on the streets of Fort Worth was a reasonable exercise of its police power."

It went on to consider whether or not the ordinance in question was reasonable. At page 46, the Court of Appeals recognized the right of the municipality to deny permission to solicit if the cost of collection was excessive. It said:

> "As an incident to the right of a city to regulate the use of its streets by solicitors and as an element of the protection a city may afford its citizens, a city may reasonably require of one who wishes to solicit that he furnish it with a statement of the past and expected receipts and costs of collection of the funds solicited within its limits and to deny permission to solicit if the cost of collection is excessive."

The Court recognized that the burden was on the plaintiff to establish that the ordinance was unreasonable. It said at page 46:

> "Upon the Foundation rested the burden of establishing that the ordinance did not rest on any reasonable basis. Goldblatt v. Town of Hempstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130. It did not meet this burden and we cannot say that the limitation provisions of the ordinance are unreasonable, especially in light of the strong presumption of constitutionality afforded an ordinance. Goldblatt v. Town of Hempstead, supra; Mestre v. City of Atlanta, 5th Cir. 1958, 255 F.2d 401; Standard Oil Co. v. City of Tallahassee, 5th Cir. 1950, 183 F.2d 410, cert. denied 340 U.S. 892, 71 S.Ct. 208, 95 L.Ed. 647; City of Anchorage v. Richardson Vista Corp., 9th Cir. 1957, 242 F.2d 276; City of Seattle v. Rogers, supra; American Cancer Society v. City of Dayton, supra at 223 of 114 N.E.2d. The standards fixed by the ordinance are a valid and constitutional means of achieving the City's purpose of protecting its citizens."

The Court went on to reject an argument that the ordinance was lacking in definite and certain standards. An examination of the ordinance, which is set forth in a footnote to the opinion,

makes it clear that the Fort Worth ordinance was not nearly as specific or definite as the Schaumburg ordinance. It should be emphasized that *National Foundation* involved the use of public streets which this Court has recognized as more appropriate for the exercise of First Amendment rights than the private property involved in the case at bar.

The Court of Appeals in the instant case attempted to distinguish the *National Foundation* case on the ground that an organization which did not meet the requirement was given the opportunity to show that its percentage was not unreasonable. However, the Fifth Circuit opinion is not based upon such a distinction. The quotation from the case, which appears in the Court of Appeals opinion, was not the basis upon which the opinion rests. Instead, as indicated above, the Court clearly held that a city may reasonably require of one who wishes to solicit, a statement of the past and expected receipts and costs of collection and to deny permission to solicit if the cost is excessive.

This Court has, of course, repeatedly held that the First Amendment does not give unbridled discretion for the exercise of free speech on private property or even on public property. Reasonable requirements of "time, place and manner" have been repeatedly recognized even to the extent of prohibiting what might be free speech in certain open public areas, from being perpetrated on captive audiences on private property. Thus, in the case of *Tinker* v. *Des Moines Community School District*, 393 U. S. 503, 21 L. Ed. 2d 731 (1969), Mr. Justice Black in a dissenting opinion pointed out at page 517:

> "While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In Cox v. Louisiana, 379 US 536, 554, 13 L Ed 2d 471, 85 S Ct 453 (1965), for example, the Court clearly stated that the rights of free speech and assembly 'do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.' "

Moreover, it is clear that the First Amendment does not require that individuals be permitted to go on private property to express their opinions, *Lloyd Corp.* v. *Tanner*, 407 U. S. 551, 33 L. Ed. 2d 131, and a municipality can even prevent the use of public streets by ordinance when the exercise of freedom of speech would result in an interference with normal activities. *Grayned* v. *City of Rockford*, 408 U. S. 104, 33 L. Ed. 2d 222 (1972).

The right of individuals to be left alone in the peaceful enjoyment of their homes has been sustained repeatedly, even in the face of First Amendment challenges. In *Rowan* v. *United States Post Office*, 397 U. S. 728, 25 L. Ed. 2d 736, 90 S. Ct. 1484 (1970), this Court at page 737 said:

> "The Court has traditionally respected the right of a householder to bar, by order or notice, solicitors, hawkers, and peddlers from his property. See Martin v. Struthers, supra; cf. Hall v. Commonwealth, 188 Va 72, 49 SE2d 369, appeal dismissed 335 US 875, 93 L Ed 418, 69 S Ct 240 (1948)."

The Court continued in *Rowan*:

> "Nothing in the Constitution compels us to listen to or view any unwanted communication, whatever its merit; . . . The ancient concept that 'man's home is his castle' into which 'not even the king may enter' has lost none of its vitality, and none of the recognized exceptions includes any right to communicate offensively with another. See Camara v. Municipal Court, 387 U S 523, 18 L Ed 2d 930, 87 S Ct. 1727 (1962).

This right of government to regulate was recognized again in *Cohen* v. *California*, 403 U. S. 15, 29 L. Ed. 2d 284, 91 S. Ct. 1780 (1971), where the Court at page 21 said:

". . . This Court has recognized that government may properly act in many situations to prohibit intrusion into the privacy of a home of unwelcome views and ideas which cannot be totally banned from the public dialogue. . . ."

In *Lehman* v. *City of Shaker Heights*, 418 U. S. 298, 41 L. Ed.2d 770, 94 S. Ct. 2714, this Court again balanced alleged First Amendment rights against the right of privacy when it held that a municipality could properly prevent political advertising on its transit vehicles. The Court cited *Packer Corp.* v. *Utah*, 285 U. S. 105, 110, 76 L. Ed. 643, 52 S. Ct. (1932), as authority for the proposition that a legislature could recognize degrees of evil in dealing with information thrust upon captive audiences. The Court also cited the *Breard* case. In *Lehman*, the Court emphasized that even in granting access to public places for the purposes of free speech, the nature of the forum and the conflicting interests involved remained important in determining the degree of protection to be afforded. At page 302, the Court said:

"These situations are different from the traditional settings where First Amendment values inalterably prevail. Lord Dunedin, in M'Ara v. Magistrates of Edinburgh [1913] Sess Cas 1059, 1073-1074, said, '[T]he truth is that open spaces and public places differ very much in their character, and before you could say whether a certain thing could be done in a certain place you would have to know the history of the particular place.' Although American constitutional jurisprudence, in the light of the First Amendment, has been jealous to preserve access to public places for purposes of free speech, the nature of the forum and the conflicting interests involved have remained important in determining the degree of protection afforded by the Amendment to the speech in question. See, e.g., Cox v. New Hampshire, 312 US 569, 85 L Ed 1049, 61 S Ct 762, 133 ALR 1396 (1941); Breard v. Alexandria, supra; Poulos v. New Hampshire, 345 US 395, 97 L Ed 1105, 73 S Ct 760, 30 ALR2d 986 (1953); Cox v. Louisiana, 379 US 559, 13 L Ed 2d 487, 85 S Ct 476 (1965); Adderley v. Florida, 385 US 39, 17 L Ed 2d 149, 87 S Ct 242 (1966); Red Lion Broadcasting Co. v. FCC, 395 US 367, 23 L Ed 2d 371, 89 S Ct 1794 (1969); Police Department of Chicago v. Mosely, 408 US 92, 33 L Ed 2d 212, 92 S Ct 2286 (1972); Grayned v. City of Rockford, 408 US 104, 33 L Ed 2d 222, 92 S Ct 2294 (1972); Columbia Broadcasting v. Democratic National Committee, 412 US 94, 36 L Ed 2d 772, 93 S Ct 2080 (1973); Pittsburg Press Co v. Pittsburgh Comm'n on Human Relations, 413 US 376, 37 L Ed 2d 669, 93 S Ct 2553 (1973).

In his concurring opinion Mr. Justice Douglas emphasized on page 306 that a street car or a bus is plainly not a part of a sidewalk or other meeting place for discussion anymore than it is a highway. It is only a way to get to work or back home. Justice Douglas pointed out on page 307:

"In asking us to force the system to accept his message as a vindication of his constitutional rights, the petitioner overlooks the constitutional rights of the commuters. While petitioner clearly has a right to express his views to those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it. In my view the right of the commuter to be free from forced intrusions on their privacy precludes the city from transforming its vehicles of public transportation into forums for the dissemination of ideas upon this captive audience."

Certainly, what is said about commuters on a public busline is even more compelling when applied to homeowners seeking to enjoy the privacy of their residences.

The Village Board can well make the determination as a responsible legislative body that *bona fide* charitable organizations, because of the public interests that they serve can be permitted to intrude upon this privacy, but at the same time require that these organizations are, in fact, what they purport to be, rather than mere conduits for the commercial gain of their sponsors. The dissent in *Lehman* turns not upon the question of whether there was an absolute right to use public transit cars as a forum for the exercise of First Amendment but whether once the City

had accepted commercial advertising it could pick and choose between the type of advertising.

The Court of Appeals, in its opinion here, relies upon *Cantwell* v. *Connecticut,* 310 U. S. 296, 60 S. Ct. 900, 84 L.Ed. 1213 (1940), *Schneider* v. *State,* 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939), and *Martin* v. *Struthers,* 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943). These cases are clearly not applicable. In each of these cases, this Court determined that the ordinances in question involved administrative discretion without standards. This Court considered *Cantwell* at length in the *Oradell* case. It also clearly distinguished *Schneider* v. *State* and *Martin* v. *Struthers.* Those cases involved ordinances which required permits without standards and vested unbridled discretion in an administrative officer or simply prevented canvassing completely.

As a matter of fact, in *Cantwell* this Court said, "without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish identity and his authority to act for the cause which he purports to represent." 310 U. S. 296, 306, 84 L. Ed. 1213, 60 S. Ct. 900.

In commenting on the very cases relied upon by the Court here, the Court in *Oradell* at 425 U. S. 619, said:

> "These opinions of the Court and the dissenting opinions found common ground as to the important municipal interests at stake. See Martin v. Struthers, supra, at 152, 87 L. Ed. 1313, 63 S. Ct. 862 (Frankfurter, J., dissenting); id., at 154, 87 L. Ed. 1313, 63 S. Ct. 862 (Reed, J., dissenting); Douglas v. Jeannette, 319 U. S. 157, 166, 87 L. Ed. 1324, 63 S. Ct. 877 (1963) (Jackson J., dissenting in Martin v. Struthers). Professor Zechariah Chafee articulated something of the householder's right to be let alone, saying:
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> > 'Of all the methods of spreading unpopular ideas, [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself up in his own ideas if he desires.' Free speech in the United States 406 (1954).
>
> Professor Chafee went on to note; '[These cases] do not invalidate all ordinances that include within their scope . . . doorway dissemination of thought. Several sentences in the opinions state that ordinances suitably designed to take care of legitimate social interests are not void.' Id., at 407."

In *Breard* v. *Alexandria,* 341 U. S. 622, 95 L. Ed. 1233 (1951) the Court specifically sustained a municipal ordinance which prohibited peddlers or canvassers from calling upon the occupants of private residences without having been invited. As applied to solicitors for magazine subscriptions the Court held there was no violation of the First Amendment. In *Va. Pharmacy Board* v. *Va. Consumer Council,* 425 U. S. 748, 48 L. Ed. 2d 346, 96 S. Ct. 1817 (1976), the Court in discussing the application of the First Amendment to drug advertising said: "The First Amendment as we construe it today, does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely."

The quotation at 590 P. 2d 226, from Justice Brennan in *Hynes* quoting *Thomas* v. *Collins,* 323 U. S. 516, 65 S. Ct. 315, 323, 89 L. Ed. 440 (1945), is not relevant. Justice Brennan's remarks clearly were related to restraining orderly discussion and persuasion at an appropriate time and place. We suggest that the invasion of a private home uninvited and at inappropriate hours is not a proper time and place for orderly discussion and persuasion. We think it is clear that Section 20(g) of Chapter 22 of the Schaumburg Village Code is not invalid on its face nor as applied to the Respondent's organization.

B. The Ordinance in Question Is Not Unconstitutional Because of Vagueness.

An examination of the Court of Appeal's opinion indicates that the opinion was not based upon the alleged "vagueness" of the ordinance. The Court does say that "Chapter 22 does present problems similar to those encountered with regulations previously struck down for vagueness." 590 F. 2d 224. Other references are made in the opinion to sections which are allegedly "unclear" but the Court fell short of holding the ordinance void because of vagueness.

Nevertheless, it is useful to determine whether or not the ordinance in question suffers the fatal defect that resulted in the invalidation of the *Oradell* ordinance. We suggest that the ordinance is clear on its face and is not subject to the claims of vagueness alleged by the Respondents pleadings in the trial court.

We have pointed out above that the 75% requirement is only one of several specific standards which when met entitle an applicant to a permit. Upon meeting of these conditions there is no discretion in the Village Board. It must issue a permit.

This Court has repeatedly set forth the standards which are to be applied in determining whether a statute or ordinance is impermissibly vague. In *Broadrick* v. *Oklahoma*, 413 U. S. 601, 37 L. Ed. 2d 830, 93 S. Ct. 2908 (1973), the Court said:

> "We have held today that the Hatch Act is not impermissibly vague. CSC v Letter Carriers, 413 US 548, 37 L Ed 2d 796, 93 S Ct 2880. We have little doubt that § 818 is similarly not so vague that 'men of common intelligence must necessarily guess at its meaning.' Connally v. General Construction Co., 269 US 385, 391, 70 L Ed 322, 46 S Ct 126 (1926). See Grayned v. City of Rockford, 408 US 104, 108-114, 33 L Ed 2d 222, 92 S Ct 2294 (1972); Colten v. Kentucky, 407 US 104, 110-111, 32 L Ed 2d 584, 92 S Ct 1953 (1972); Cameron v. Johnson, 390 US 611, 616, 20 L Ed 2d 182, 88 S Ct 1335 (1968). Whatever other problems there are with § 818, it is all but frivolous to suggest that the section fails to give adequate warning of what activities it proscribes or fails to set out 'explicit standards' for those who must apply it. Grayned v. City of Rockford, supra, at 108, 33 L Ed 2d 222, 92 S Ct 2294. In the plainest language, it prohibits any state classified employee from being 'an officer or member' of a 'partisan political club' or a candidate for 'any paid public office.' It forbids solicitation of contributions 'for any political organization, candidacy or other political purpose' and taking part 'in the management or affairs of any political party or in any political campaign.' Words inevitably contain germs of uncertainty and, as with the Hatch Act, there may be disputes over the meaning of such terms in § 818 as 'partisan,' or 'take part in,' or 'affairs of' political parties. But what was said in Letter Carriers, supra, at 578-579, 37 L Ed 2d at 816, is applicable here: 'there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.' "

In *Grayned* v. *City of Rockford*, 408 U. S. 104, 33 L. Ed. 2d 222, 92 S. Ct. 2294 (1972), the Court held valid an anti-noise ordinance of the City of Rockford which made it unlawful for any person while on a public or private grounds adjacent to a building in which school was in session to "willfully make or assist in making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof. . . ." This Court at page 110 said:

> ". . . We find no unconstitutional vagueness in the anti noise ordinance. Condemned to the use of words, we can never expect mathematical certainty from our language. The words of the Rockford ordinance are marked by 'flexibility and reasonable breadth, rather than meticulous specificity,' Esteban v. Central Missouri State College, 415 F2d 1077, 1088 (CA 8 1969) (Blackmum, J.), cert denied, 398

US 965 (1970), but we think it is clear what the ordinance as a whole prohibits."

See also, *Arnett* v. *Kennedy*, 416 U. S. 134, 40 L. Ed. 2d 15, 94 S. Ct. 1633 (1974), where the Court rejected the challenge to the Lloyd-La Folette Act relating to personnel removal or suspension "only for such cause as will promote the efficiency of the service." The Court there held that the standard was not impermissibly vague. At page 159, the Court said:

> "We hold the standard of 'cause' set forth in the Lloyd-LaFollette Act as a limitation on the Government's authority to discharge federal employees is constitutionally sufficient against the charges both of overbreadth and of vagueness. In CSC v Letter Carriers, 414 US 548, 578-579, 37 L Ed 2d 796, 93 S Ct 2880 (1973), we said:
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> > [T]here are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest. "[T]he general class of offense to which . . . [the provisions are] directed is plainly within [their] terms . . . , [and they] will not be struck down as vague, even though marginal cases could be put where doubts might arise." United States v. Harriss, 347 US 612, 618 [98 L Ed 989, 74 S Ct 808] (1954).'
>
> Congress sought to lay down an admittedly general standard, not for the purpose of defining criminal conduct, but in order to give myriad different federal employees performing widely disparate tasks a common standard of job protection. We do not believe that Congress was confined to the choice of enacting a detailed code of employee conduct, or else granting no job protection at all. As we said in Colten v. Kentucky, 407 US 104, 32 L Ed 2d 584, 92 S Ct 1953 (1972);
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> > 'The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.' Id., at 110, 32 L Ed 2d 584."

We believe it is thus clear that the ordinance in question cannot be held to be unconstitutional because of vagueness. The mere fact that the Court of Appeals could stretch to find some situations which may or may not arguably be covered by the ordinance does not mean that the ordinance must thereby fall. The Court of Appeals said that Articles II and III do not necessarily cover all possible situations in door-to-door solicitations but that does not mean that the ordinance is not applicable to the Respondent nor does it render the ordinance constitutionally impermissible. A legislative body need not legislate to meet all possible evils. It can deal with substantial problems without exhausting every conceivable instance where problems may occur.

The First Amendment does not mean that a municipality acting under its police power cannot protect its homeowners from uninvited disturbance by purportedly charitable organizations which do not meet reasonable standards for demonstrating their charitable character. The First Amendment is not an unbridled license to permit intrusion into the privacy of a citizen's home. Even if the solicitor seeks not only funds but the dissemination of a particular form of information or the sale of printed material he is not constitutionally immune from the municipality's power to regulate the type of solicitation sought here.

This Court has recognized most recently in the *Hynes* case the vital state interest in the protection of the homeowners from uninvited solicitors. The defect in *Hynes* is not present in the Schaumburg ordinance scheme. We suggest that the ordinance is not vague; it is not unconstitutional on its face or ts applied. We, therefore, respectfully suggest that the Court of Appeals erred and should be reversed.

II.

A MUNICIPALITY HAS THE RIGHT TO PROHIBIT PURPORTEDLY CHARITABLE SOLICITATIONS WHEN THE SOLICITING ORGANIZATION FAILS TO DEMONSTRATE THAT AT LEAST 75% OF ITS RECEIPTS ARE UTILIZED FOR ITS CHARITABLE PURPOSES.

The Court of Appeals, below as did the Fifth Circuit in the *National Foundation* case, recognized that a municipality has a legitimate interest in protecting its citizens from fraud by solicitors who would use the funds collected for purposes other than those expressly or impliedly represented. This aspect of the police power is in addition to the right to protect from annoyance and danger and promote the peaceful enjoyment of the home recognized in the *Hynes* case. This Court has repeatedly held in *Oradell, Cantwell* and *Martin* v. *Struthers* that there are important municipal interests at stake. Professor Chafee has articulated the householders' right to be left alone pointing out that the possibilities of persuasion are slight compared to the certainty of annoyance.

We have suggested above that the right of freedom of speech must be exercised in a time, place and manner which does not impinge upon the rights of privacy and security in one's home. The Court of Appeals below decided this case purely on a First Amendment basis. The equal protection argument though advanced below, was not acted upon by either the trial court or the Court of Appeals. It is pertinent to observe, however, that when solicitation of funds is involved, the legislative body can well impose restrictions which might otherwise be inappropriate for the unalloyed exercise of freedom of speech.

Both the *National Foundation* case and this case below recognized that when solicitations for funds are involved, there are additional aspects which give rise to the police power not otherwise present in cases involving solely freedom of expression. When freedom of speech is coupled with the solicitation of funds,

additional public interests are involved which warrant a less restrictive view of the state's right to regulate such activities.

It may be true that a householder can be equally disturbed by a knock on the door when the caller's objective is purely informational as when his objective is commercial or the solicitation of funds. We suggest however that the legislative body can well treat differently the solicitor whose ultimate objective is commercial gain rather than the pure dissemination of information and opinion. The legislative body in the exercise of its police power can reasonably make a distinction as did the Village Board here between solicitation for genuinely charitable purposes and those who would use the cloak of charity to mask their pursuit of commercial gain.

The cases which have invalidated ordinances which purported to regulate or prohibit door-to-door solicitations turned upon unabridged discretion, vested usually in administrative officers to issue permits and did not announce a rule that solicitation of funds in the name of charity was beyond the scope of reasonable municipal regulation. When, as is apparently the case here, a majority of the funds are utilized not for the charitable purposes for which the organization was purportedly organized, but instead to compensate canvassers, officers, and employees, it must be concluded that what is involved is nothing more nor less than a commercial enterprise even though it be dressed in the trappings of a charitable or environmental purpose.

Schaumburg's ordinance is intimately related to the articulated substantial governmental interests clearly recognized by this Court in *Hynes* and *Breard*. The protection of citizens from misrepresentation, crime and undue annoyance and in the quiet enjoyment of their homes are well recognized, articulated and substantial governmental interests. In fact, they are paramount objectives of any organized society.

A homeowner has a legitimate right to know whether or not the solicitor who presents himself at his door as a representative

of a charitable organization is in fact telling the truth. If a citizen inquires as to whether a solicitor has received a permit from the municipality, he knows immediately whether or not the solicitor represents a charitable organization as recognized by the Village or is involved in either a commercial or even fraudulent enterprise.

The Village, as an exercise of its police power, clearly has the right to prescreen individuals who would represent themselves as charitable solicitors. It is not censoring the views of CBE or any other group. All the traditional methods of communication are open, be they radio, television, newspapers or even handbills in the public streets. The Village is merely seeking to require that persons who go upon the private property of its citizens and represent themselves as charitable solicitors are in fact what they claim to be. No legitimate views are being barred from the Village of Schaumburg nor is any chilling effect on the First Amendment presented.

An ordinance of this nature must set forth standards which are specific and not vague. (See above.) However, it is clear that this ordinance does in fact set forth specific standards. In the case of *Grayned* v. *City of Rockford,* 408 U. S. 104, 33 L. Ed. 2d 222, this Court held valid as not vague an anti-noise ordinance. Relying upon *Tinker* v. *Des Moines School District,* 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969), it held that the ordinance was not overbroad or vague. Moreover, in *Grayned* this Court further held that expressive activity may be prohibited if it materially disrupts classwork or involves substantial disorder or invasion of the rights of others. The Court went on to note that:

> "Rockford's modest restriction on some peaceful picketing represents a considered and specific legislative judgment that some kinds of expressive activities should be restricted at a particular time and place. . . . Such a reasonable regulation is not inconsistent with the First and Fourteenth Amendments."

The specific standards of this ordinance make it clear that the Village has properly legislated to restrict some kinds of expressive activity at a particular time and place, in this instance, at the domiciles of its citizens. We have previously discussed the *Oradell* case at length and pointed out that the standards imposed in the Schaumburg ordinance clearly meet the requirements of the opinion.

The *National Foundation* case recognizes the right of a municipality to prohibit solicitations for funds by charitable organizations when in fact a disproportionate amount of the funds are not used for charitable purposes. *Breard* injected the argument that prohibiting door to door solicitation violated the First Amendment. We suggest that under the decisions of this Court and in the interest of the public welfare, a municipality does have the right to prohibit so-called charitable solicitations when less than 75% of its receipts are utilized for charitable purposes. To transform this exercise of municipal authority into a violation of the First and Fourteenth Amendment would, in the words of this Court in the *Breard* case, constitute "a misuse of the great guarantees of free speech and free press."

The Illinois Appellate Court in *People ex rel. Scott* v. *Police Hall of Fame,* 60 Ill. App. 3d 331 (1978), recognized that no First Amendment rights were violated when charities were required to use 75% of their gross receipts for charitable purposes. In that case the Illinois Charitable Act was challenged. The statute required the application of 75% of gross receipts toward charitable purposes as therein defined. A specific First Amendment challenge to this provision was made. The Court concluded that the fund raisers' claim of unconstitutionality did not demonstrate an abridgment of First Amendment freedoms.

The Court went on to say: "That statutory formula was devised to secure protection for the donations given charities by the public and we do not perceive that it unconstitutionally limits the charities in the exercise of their first amendment rights."

The Village of Schaumburg is a home rule municipality under the Illinois Constitution of 1970. Under that Constitution there is a direct grant of police power to home rule municipalities. Subsection 6 of Article VII of the Illinois Constitution provides that except as limited in that section "a homerule unit may exercise any power and perform any function pertaining to its government and affairs including but not limited to the power to regulate for the protection of public health, safety, morals and welfare; to license; to tax; and incur debt."

The Illinois Supreme Court has interpreted this provision as vesting in of homerule municipalities and their legislative bodies the same powers enjoyed by the Illinois General Assembly. In commenting on § 6 of Article VII of the Illinois Constitution, the Illinois Supreme Court in the case of *City of Urbana* v. *Houser*, 67 Ill. 2d 268, 367 N. E. 2d 692 (1977) at page 273 said: "Home rule units thus have the same powers as the sovereign except where such powers are limited by the General Assembly." Such municipalities may impose standards by local ordinance which differ from or exceed the requirements of the State.

It is thus clear that the Village of Schaumburg has a direct constitutional grant of police power which enables it to enact the kind of legislation at issue here. The exercise of the legislative judgment by the Village Board was well within the discretion which this Court should respect. In attempting to balance the interests of charitable organizations in their solicitation efforts against the right of homeowners to be safe from fraud, crime and annoyance, the Village has chosen the technique which is at issue here. The regulation seeks to deal with substantial problems in a meaningful and realistic way.

State legislatures and courts as well as the federal courts, have recognized the legitimacy of limiting charitable solicitations in a manner which will preserve the true charitable character of the activity represented to the public. We suggest that the Petitioner has the right to prohibit purportedly charitable solicitations in the manner set forth in its ordinance. Such regulation does not violate the First Amendment and this Court ought not to substitute its judgment for that of the legislative body.

III.

THE RESPONDENTS WERE NOT ENTITLED TO A SUMMARY JUDGMENT.

This case was decided at the trial level and affirmed by the Court of Appeals on a motion for summary judgment. The finding of the trial court was that the ordinance was unconstitutional on its face. The Court of Appeals refused to go that far. Instead it specifically said at 590 F. 2d 220, 225:

> "We do not decide the reasonableness of the 75% requirement as applied to solicitation by the more traditional charitable organizations. However for the reason stated below, the requirement is on its face unreasonable when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization."

The Court of Appeals thus found itself in the anomalous position of agreeing that the ordinance is not invalid on its face and conceding that it would not decide the reasonableness of the 75% requirement, but, at the same time, holding the ordinance invalid as applied to the Respondents without having given the Village an opportunity to demonstrate why the ordinance was reasonable as applied to CBE.

We suggest that on the reasoning of the Court of Appeals' opinion alone, the granting of a motion for summary judgment

was improper. Since the ordinance concededly was not invalid on its face and its reasonableness was to be determined apparently by the character of the organization, the Court of Appeals should not have precluded an investigation into the character of the Respondent organization.

An examination of the motion for summary judgment and the affidavit of Hoellwarth makes it clear that the factual background of this controversy as sketched in the pleadings and as revealed in the Hoellwarth affidavit is so incomplete as to preclude the entry of the summary judgment. In order to sustain the motion for summary judgment, the Court of Appeals had to make assumptions as to the character of the organization involved when there were controverted allegations as to the character of that organization. The only way it could have sustained the trial court's granting of a motion for summary judgment was to hold the ordinance invalid on its face which it refused to do.

The function of a motion for summary judgment is not to weigh the evidence or to resolve a conflict as revealed in the pleadings or the affidavits. Summary judgment can only be granted when the moving party is entitled to a judgment as a matter of law.

The rules with respect to summary judgment are well known and extensive discussion and citation are not necessary here, Rule 56(c) of the Rules of Civil Procedure relating to motions for summary judgment provides in part:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

This Court on numerous occasions has considered the implications of the motion for summary judgment and has refused to approve summary judgments when inferences could be drawn from underlying facts, which when viewed in the light most favorable to the party opposing the motion, would indicate the presence of a material issue of fact. In the case of *Associated*

Press v. *United States of America,* 326 U. S. 1, 89 L. Ed 2013, 65 S. Ct 1416 (1945), the Court noted that: "Rule 56 should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them."

In the case of *Sartor* v. *Arkansas Nat. Gas Corp.,* 321 U. S. 620, 88 L. Ed 967 (1943), the Court, in holding that a summary judgment was improperly granted, commented at page 627:

> "The Court of Appeals below heretofore has correctly noted that Rule 56 authorizes summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try. American Ins. Co. v. Gentile Bros. Co. (CCA 5th) 109 F(2d) 732; Whitaker v. Coleman (CCA 5th) 115 R(2d) 305)."

The Court went on to conclude on page 628:

> "It may well be that the weight of the evidence would be found on a trial to be with defendant. But it may not withdraw these witnesses from cross-examination, the best method yet devised for testing trustworthiness of testimony. And their credibility and the weight to be given to their opinions is to be determined, after trial, in the regular manner. The judgment accordingly is reversed."

The Court in the leading case of *United States* v. *Diebold,* 369 U. S. 654, 8 L. Ed. 2d 176, 177 (1962), said: "On summary judgment the inferences to be drawn from the underlying facts contained in (such) materials must be viewed in the light most favorable to the party opposing the motion." The Court there concluded that the materials before the District Court, having raised a genuine issue as to ultimate facts, it was improper to decide the issue on a motion for summary judgment.

In the case of *Adickes* v. *Kress & Co.,* 398 U. S. 144, 26 L. Ed. 2d 142 (1970), the Court again discussed at length the

criteria for granting a motion for summary judgment. At page 152, the Court said:

> "Our own scrutiny of the factual allegations of petitioner's complaint, as well as the material found in the affidavits and depositions presented by Kress to the District Court, however, convinces us that summary judgment was improper here, for we think respondent failed to carry its burden of showing the absence of any genuine issue of fact."

The Court went on to say at 398 U. S. 158:

> " '[o]n summary judgment the inferences to be drawn from the underlying facts contained in [the moving party's] materials must be viewed in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 US 654, 655, 8 L.Ed.2d 176, 177, 82 S Ct 993 (1962).' "

It further commented at 160:

> "And, in a comment directed specifically to a contention like respondent's, the Committee stated that '[w]here the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied *even if not opposing evidentiary matter is presented.*' "

It concluded its discussion of the motion for summary judgment at page 161 when it said:

> "Yet the party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and if he does discharge that burden then he is not entitled to judgment. No defense to an insufficient showing is required. 6 J Moore, Federal Practice Par. 56.22[2], pp. 2824-2825 (2d Ed 1966)."

The basic rule was also well stated in *Poller* v. *Columbia Broadcasting System*, 368 U. S. 464, 7 L. Ed. 2d 458 (1962), where the Court at page 461 said:

> "Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that [except as to the amount of damages] there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' Rule 56(c), Fed Rules Civ Proc. This rule authorizes summary judgment 'only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, . . . [and where] no genuine issue remains for trial . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try.' Sartor v. Arkansas Natural Gas Corp. 321 US 620, 627, 88 L ed 967, 972, 64 S Ct 724 (1944)."

The affidavit of Larry Hoellwarth in support of the motion for summary judgment is not helpful in determining whether or not there are material issues of fact to be decided. The only allegation of the affidavit which bears upon what the Respondent actually does is paragraph 8 of the affidavit which in essence states that representatives of CBE distribute pamphlets on environmental subjects and on CBE activities, answer questions, accept signatures, and accept contributions from residents. Such activities, even if in fact true, would not necessarily preclude the type of regulation contained in the Schaumburg ordinance.

If, as the trial court is required to do, it drew inferences most favorable to the party opposing the motion, it could well infer that the activities described by Hoellwarth are in fact of a fully commercial nature. As the cases on door-to-door solicitation point out, there is a dichotomy between the exercise of freedom of speech and religion on the one hand and purely commercial activities on the other. The Village has adopted regulations covering commercial peddlers and solicitation which are not in issue here. The mere fact that the material which is sold may be informative does not change the commercial character of the business undertaking.

Likewise, the mere fact that an organization is organized as not-for-profit, or even approved by the Attorney General as a

charitable organization, does not mean that the solicitation itself is not commercial in nature. It is because of the fact that the Village desires to make certain that commercial activities are not clothed with the appearance of charity that the 75% requirement has been imposed. The affidavit of Hoellwarth, who was not subject to cross-examination as the result of the granting of the motion for summary judgment, is insufficient by itself to support a motion for summary judgment. Yet, only that affidavit appears in the record to support the purported First Amendment activities of the Respondents.

The Village at least should be entitled to inquire into whether what CBE does is protected under the First and Fourteenth Amendments. It was effectively precluded from doing so by the granting of the motion for summary judgment.

We therefore respectfully suggest that the trial court as a matter of law erred in granting the motion for summary judgment, and this cause should at least have been remanded. The trial court should also be required to take evidence on the question of just what CBE in fact does, which brings it within the purview of First Amendment protections. In this connection it might be noted that attached to the Village's answer as an exhibit in support of its allegations on information and belief, was a newspaper article headlined "Is $$ Real Cause in Clean Air Fight?" The information contained in that article at least gives some basis for believing that CBE is engaged primarily and overwhelmingly in the business of making money for its officers and canvassers. Whatever the merits of the free enterprise system as applied to these canvassers, the truth of the alleged facts must be determined in order to ascertain the extent to which the activities in question are subject to First Amendment protection.

It should be noted that the Respondents did not file a reply or in any manner controvert the allegations in the Village's answer. Therefore, for the purposes of the motion for summary judgment, the allegations in the answer as affirmative defenses, including the exhibits, must be taken as true. The exhibit indicates that more than two-thirds of the $290,399 collected by CBE in fiscal year 1974-75 was spent on salaries and employee health benefits. Slightly smaller percentages have been spent on salaries each year since CBE's founding. The exhibit points out that about 69% of the salaries were paid to solicitors and fundraisers and 31% to program organizers, and contrasts these figures with the salary and benefit costs of 27% for the American Cancer Society, 15% for the Heart of Illinois United Way Organization, and 22% for the Chicago Chapter of the National Multiple Sclerosis Society.

It should also be noted that the New York Attorney General's office filed suit against CBE, charging the organization had perpetrated a "fraud upon the public" by using 74% of the $175,808 collected in fiscal year 1972-73 for administration and fund raising expenses. The suit never came to trial because of the demise of the New York organization.

We suggest that these allegations, which are stated on information and belief, as shown on an exhibit to our answer, raise serious questions as to whether or not the activities of the Respondents are in fact a charitable, not-for-profit activity which is protected by the First and Fourteenth Amendments. We believe we are entitled to a trial on these issues, and that the trial court erred in granting the motion for summary judgment.

The Court of Appeals, in its opinion, ignores the question as to whether a summary judgment was proper because of the presence of controverted material issues of fact. The Court concludes that the constitutional validity of Section 22-20(g) is solely a question of law. However, subsequently the Court specifically determines that it will not pass upon the reasonableness of the 75 percent requirement as applied to the "more traditional charitable organizations".

The Court, however, goes on to say, "the requirement is on its face unreasonable when applied to an organization which by its nature *allegedly* devotes a large portion of its efforts to

information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization." (Emphasis added.)

Yet the record does not permit the Court to reach this conclusion with respect to the nature of the organization in question. The very nature of the organization is controverted in the pleadings. The Court of Appeals could not reach its conclusion that the ordinance was unconstitutional on its face without passing upon its reasonableness generally, absent a factual determination as to the nature of the organization in question.

In the case of *Citizens for Better Environment* v. *Nassau County*, 488 F. 2d 1353 (CCA 2, 1973), the Court of Appeals refused to grant a preliminary injunction sought by the Respondents' New York branch against certain municipalities seeking to enforce local solicitation ordinances. The case is instructive on several points which are involved in this proceeding. Footnote 1 which appears on page 1355 refers to *National Foundation* v. *City of Fort Worth*, 415 F. 2d 41, and says: "CBE concedes the validity of *National Foundation*. . . ." In the *Nassau County* case, the question was whether CBE was in fact a charitable organization within the meaning of an exemption granted by local ordinance. As here, CBE was registered with the Internal Revenue Service and with the State Attorney General's office.

In its motion for a preliminary injunction, CBE had filed affidavits alleging in substance that its primary activity was sending its employees door-to-door to talk with residents about environmental problems, distribute the organization's literature and solicit contributions. It contended that because of its nonprofit nature together with its registration under the State's Solicitation Statutes it was exempt from local ordinances which on their face exempted "charitable" organizations. The Court of Appeals in denying the preliminary injunction noted at page 1362:

> "Most notably there are still serious questions concerning the nature of CBE's campaign and the import as a charitable organization under state law. Rather than attempt to resolve these issues in an evidentiary hearing, CBE rested its motion for preliminary relief on the conflicting affidavits and declarations of CBE and county officials."

The clear import of the *Nassau County* decision was that the factual status of CBE was to be determined in an evidentiary hearing rather than on the kind of affidavit present there, which was essentially the same as Hoellwarth's affidavit in the instant case.

There is no question that the basic issues presented in this case are those related to the First Amendment. As we have indicated above, we believe that the First Amendment does not prevent the Village from enacting or enforcing the ordinance in question here. We suggest, however, that the very posture of this case, decided as it was on a motion for summary judgment although material issues of fact remained to be decided, made the case inappropriate for the fiind of determination made by the Court of Appeals.

CONCLUSION.

Based on the foregoing, we respectfully suggest that the trial court erred in granting the motion for summary judgment and the Court of Appeals also erred in affirming that decision.

We believe we have conclusively demonstrated that Section 22(g) relating to the 75% limitation in a charitable solicitation ordinance is not invalid either on its face or as applied. The ordinance does not violate the First Amendment or impinge upon the constitutional rights of the Respondents. We suggest that a municipality has the right to prohibit solicitations for funds under the guise of charity, when less than 75% of the funds actually go to the purported charitable purpose. The petitioner has the right under its police power to protect its citizens from the invasion of their homes by individuals who would use the great protections of the First Amendment to erroneously misrepresent the nature of their solicitations.

At the very least, this Court must conclude that the entry of a summary judgment based upon the record before the trial court was erroneous. We, therefore, respectfully pray that this Court reverse the Court of Appeals for the 7th Circuit. We ask that Section 22(g) of the ordinance of the Village of Schaumburg be held to be constitutional on its face and as applied.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,

Attorney for Petitioner, Village of Schaumburg.

APPENDIX.

AMENDMENTS TO UNITED STATES CONSTITUTION.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SCHAUMBURG VILLAGE CODE, CHAPTER 22, ARTICLE III.

Article III. Charitable Organizations.

Sec. 22-19. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

Charitable organization. Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Contribution. The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature. (Ord. No. 1052, § 2.)

Sec. 22-20. Permits—Required; contents of application.

Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The name and address of the person in charge of solicitation in the village.

(c) The names and addresses of all the persons who will solicit contributions in the village.

(d) The dates and times of day such solicitations are to be made and the geographic area within the village wherein such solicitation shall be conducted at a particular time and day.

(e) A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

(f) Satisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).

(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

Sec. 22-21. Same—Submission and vertification of applications; issuance.

All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place. (Ord. No. 1052, § 7.)

Sec. 22-22. Same—Fee.

Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of ten dollars. (Ord. No. 1052, § 6.)

Sec. 22-23. Indicted or convicted felons as solicitors.

It shall be unlawful for any charitable organization to utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony. (Ord. No. 1052, § 5.)

Sec. 22-24. Hours; entering premises posted for "no soliciting."

No permit issued under the provisions of this article shall permit solicitation before the hour of 9:00 A.M. and after the hour of 6:00 P.M., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "no solicitors or peddlers invited." (Ord. No. 1052, § 4.)

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, ET AL.,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RESPONDENTS' BRIEF.

MILTON I. SHADUR,
GERALDINE SOAT BROWN,
208 South LaSalle Street,
Chicago, Illinois 60604,
(312) 263-3700,
Attorneys for Respondents.

Of Counsel:
DEVOE, SHADUR & KRUPP.
DAVID GOLDBERGER, ESQ.,
Roger Baldwin Foundation
of ACLU, Inc.,
5 South Wabash Avenue,
Chicago, Illinois 60603.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RESPONDENTS' BRIEF.

QUESTIONS PRESENTED FOR REVIEW.

Respondents agree with Petitioner's presentation of Question 3 (Pet. Br. 3). Respondents agree with Petitioner's presentation of Questions 1 and 2 (Pet. Br. 3) with the necessary addition that those questions must be considered in light of the fact that Section 20(g) of Chapter 22 of the Schaumburg Village Code defines "charitable purpose" in such a way as to exclude in all events all amounts paid by a charitable organization to solicitors, all salaries of all other personnel, all attorneys' fees, advertising expenses, and all other costs that the Ordinance labels as "administrative expenses," whether or not those amounts are in fact used to further the charitable purpose of the organization.

RESPONDENTS' ADDITIONAL STATEMENT OF THE CASE.

Petitioner's statement of the case omits facts of critical materiality to this Court's consideration of both the constitutionality of the charitable solicitation ordinance of the Village of Schaumburg (the "Village") and the propriety of summary judgment in this case. Accordingly, Respondents Citizens for a Better Environment ("CBE") and Larry A. Hoellwarth add the following facts to correct those omissions.

Paragraph 3 of CBE's Amended Complaint (A. 6), verified by the affidavit of co-plaintiff Hoellwarth (A. 13), stated the following: CBE is an Illinois not-for-profit corporation organized for the purpose of protecting, maintaining and enhancing the quality of the Illinois environment. Incident to that purpose, CBE employs canvassers who go door-to-door in the Chicago metropolitan area distributing literature on environmental topics, answering questions on environmental matters posed by residents, soliciting contributions to support CBE and its program and receiving pollution complaints from residents for CBE's evaluation and assistance. This canvassing procedure is an effective means of making the public aware of CBE as a source of assistance in environmental problems.

CBE's Motion for Summary Judgment (A. 39) was supported by another affidavit by co-plaintiff Hoellwarth (A. 40-41) further describing CBE and its use of canvassers: CBE is in good standing with the Office of the Illinois Attorney General and has been granted both tax exempt and tax deductible status by the United States Internal Revenue Service. CBE's staff of canvassers are screened, trained and observed prior to hire. After training each canvasser is registered with the office of the Illinois Attorney General and attends regular seminars on developments in the environmental movement twice a week throughout his or her period of employment by CBE. CBE canvasses nearly every Northeastern Illinois community yearly. This door-to-door canvass is the single most important source of funds for the CBE program, because CBE is almost entirely supported by small contributions from individual citizens. In the door-to-door canvass CBE representatives distribute informative pamphlets on environmental subjects and on CBE activities, answer questions posed by residents, accept pollution complaints on a form provided for follow-up investigation and possible action by CBE, accept signatures to a statement of citizens' support for CBE's program and accept contributions.

CBE also submitted a Supplemental Affidavit (A. 43) by Kenneth M. Arway, its Director of Development, in support of its Motion for Summary Judgment. Mr. Arway stated that CBE's 1975 certified audit showed that 23.3% of its income was spent on fundraising and 21.5% of its income was spent on administration, and that CBE's 1976 certified audit showed that 23.3% of its income was spent on fundraising and 16.5% of its income spent on management. Mr. Arway also described CBE's in-house research staff, which includes an expert on nuclear power, a physicist, a biochemist, a geneticist, an expert on electric utilities and a research associate.[1]

None of those verified allegations in CBE's Amended Complaint, and none of the sworn statements in its supporting affidavits, was contravened by proof (in the form of affidavits or otherwise) by the Village. In its unverified Answer (A. 26-27) the Village stated only that it lacked knowledge sufficient to

1. In its Statement of the Case (Pet. Br. 7), the Village asserts without support that "More than 60% of the funds collected [by CBE] have been spent for the benefit of employees and not for any charitable purposes." Although the Village so alleged *on information and belief* as an affirmative defense (A. 33), that unsupported allegation is refuted by Mr. Arway's affidavit. In fact, even to the extent that the Village seeks to rely on the newspaper articles attached to its Answer (A. 35-37), the articles provide support for CBE's position that salaries paid to its staff and canvassers furthered CBE's charitable purpose.

form a belief as to the truth of the allegations in verified Amended Complaint Paragraph 3. Indeed, the Village went on to state that "the facts alleged in said paragraph 3 even if true, would not be relevant or material to the issues in this case with the exception that the Defendants state on information and belief that the CBE employs 'canvassers' who solicit funds for the purported purposes of the organization."

As an affirmative defense the Village alleged (A. 33), but solely on information and belief, that CBE is primarily devoted to raising funds for the benefit and salary of its employees, that its charitable purposes are negligible as compared with the primary objective of raising funds, and that more than 60% of the funds collected have been spent for the benefit of CBE's employees. No proof of those allegations was ever presented; two unverified and undocumented newspaper articles were attached as an exhibit to the Answer (A. 35-37).

As its sole response to CBE's Motion for Summary Judgment the Village filed an Answer (A. 42) consisting entirely of legal conclusions, unsupported by any affidavits, depositions or exhibits. Although the Village stated "that there are genuine issues as to material facts and the Plaintiffs are not entitled to judgment as a matter of law," it did not specify what issues and what material facts were contested. It did not deny or contest any of the matters stated in the Hoellwarth or Arway affidavits.

The District Court granted plaintiffs' motion for summary judgment, declaring Schaumburg Village Ordinance No. 1052 § 3(g), codified as Schaumburg Village Code § 22-20(g) (A. 23, the "Ordinance"), unconstitutional on its face, and enjoined enforcement of the Ordinance (A. 50-52). The Court of Appeals for the Seventh Circuit affirmed the District Court judgment. 590 F. 2d 220 (7th Cir. 1978).

Ordinance § 22-20 (A. 22-23) requires that "every charitable organization which solicits or intends to solicit contributions from persons in the village by *door-to-door solicitation* or *the use of public streets and public ways,* shall prior to such

solicitation apply for a permit" [emphasis added]. The District Court found that Section 20-22(g), requiring the applicant to prove "that at least 75% of the proceeds of such solicitation will be used directly for the charitable purpose of the organization," set up an unconstitutional condition to obtaining that permit and thus constituted an unreasonable restraint on the plaintiff's exercise of constitutional rights (A. 53).

SUMMARY OF ARGUMENT.

Schaumburg Ordinance § 22-20 prohibits the solicitation of contributions, either door-to-door or in public streets and ways, by any charitable organization that fails to submit proof that at least 75% of the funds received are used directly for the organization's "charitable purpose." In so doing, however, Ordinance § 22-20(g) defines "charitable purpose" to exclude in all events all amounts paid to solicitors, all salaries of the organization's other personnel, all attorneys' fees, all advertising costs and all other costs that it labels "administrative expenses." By denying a permit to, and prohibiting canvassing and solicitation by, any charitable organization that does not meet the 75% requirement as so defined, the Village imposes a prior restraint on such organization's exercise of First Amendment rights.

The District Court and the Court of Appeals properly found that Ordinance § 22-20(g) violated the First and Fourteenth Amendments both on its face and as applied to the Respondents, Citizens for a Better Environment ("CBE") and Larry Hoellwarth, an employee of CBE. CBE is an Illinois not-for-profit organization whose purposes and activities provide a classic case for First Amendment protection. It was created to protect, maintain and enhance the Illinois environment. To carry out that purpose it employs a staff of scientific and technical researchers and also a staff of canvassers who canvass door-to-door, disseminating and receiving information on environmental issues as well as accepting contributions. All amounts paid to those staff people are conclusively excluded by the Ordinance from being counted as part of the 75% requirement to obtain a permit.

This Court has consistently recognized door-to-door canvassing and solicitation of funds as activity protected by the First Amendment, particularly in light of its importance as a

source of support for new, small and unpopular causes. This Court's cases establish that any governmental restriction on canvassing and soliciting must be narrowly drawn to meet a compelling state interest with narrow specificity.

Orinance § 22-20(g) does not begin to approach those standards. It does not focus specifically on, or establish regulations directly related to, the two goals the Village asserts to support the Ordinance (prevention of fraud and protection of citizens from unwanted intrusion). Instead the Ordinance establishes a conclusive presumption that any charitable organization that fails to devote 75% of contributions to its charitable purpose —as "charitable purpose" is arbitrarily defined by the Ordinance, not by the organization or by the governments that have granted the organization status as a charity (in CBE's case, the State of Illinois and the United States Internal Revenue Service)—is no more than a "purported charity" and will be denied the right to solicit and canvass door-to-door and in public streets.

This conclusive presumption is inherently abritrary and unreasonable; there is no necessary nexus between the amount spent by a charitable organization on its administrative expenses and the prevention of fraud. Ordinances § 22-20(g) and its conclusive presumption are particularly unreasonable as applied to "public action" groups such as CBE, since the expenses of soliciting and canvassing and the salaries of environmental scientists and researchers are excluded by the Ordinance from the funds that can be counted as spent directly for CBE's "charitable purpose," even though the record here is undisputed that these and other CBE expenses are in fact spent for activities that further CBE's goals. But the Ordinance also operates arbitrarily as to the more "traditional" charities of nationwide scope. Its 75% requirement is not met by (for example) the American Cancer Society (Illinois Division) or by fully *one-half* of the 127 largest reporting organizations in Illinois (those having contributions of $100,000 or more); those 127 organiza-

tions involve total Illinois fundraising of $185,800,000, or 42% of all funds raised in the state.

By its operation, the Ordinance unreasonably prohibits First Amendment protected activity that constitutes both a vital source of support for CBE and an important means of spreading CBE's message. Thus, under the standards established by this Court, Ordinance § 22-20(g) is unconstitutional both on its face and as applied to CBE.

There is no genuine issue of material fact in this case, so that the District Court properly granted, and the Court of Appeals affirmed, CBE's motion for summary judgment. Because the Court of Appeals properly found Ordinance § 22-20(g) unconstitutional on its face, whether CBE would have been granted a permit to solicit under a properly drawn ordinance is not a material issue. Moreover, the Village's Answer to CBE's Complaint took the position that CBE's allegations as to its charitable purposes, and the activities of its canvassers to further those purposes, would not be relevant or material to the issues in the case even if true. Accordingly, the Village cannot now request trial on those very issues. Finally, summary judgment should be affirmed because the issue the Village now claims to require trial was not disputed or even identified by the Village before the trial court as a contested issue of fact.

The decision of the Court of Appeals affirming the decision of the District Court should be affirmed.

ARGUMENT.

I.

SCHAUMBURG'S CHARITABLE SOLICITATION ORDINANCE IS UNCONSTITUTIONAL BOTH ON ITS FACE AND AS APPLIED TO CBE.

This is a classic case for First Amendment protection. CBE is committed to one of the leading public issues of our time —preservation of the environment. That issue requires scientific and technical expertise; thus, to be effective CBE employs a research staff of scientists (A. 43). CBE is a citizens' organization. It is supported almost entirely by small contributions from individuals (A. 40). As an integral part of its activities, it employs a staff of canvassers who are trained and registered to go door-to-door distributing information on environmental issues and CBE's activities, answering questions and taking down pollution complaints for CBE research and possible action. Those canvassers also accept donations from individuals, the donations on which CBE relies for its existence.

Under the Ordinance CBE is prohibited from soliciting contributions either door-to-door or by using any public street or public way, because of its failure to prove that at least 75% of the proceeds of such solicitation "will be used directly for the charitable purposes of the organization." But the Village has defined "charitable purpose" to exclude in all events any amounts paid to solicitors (even though it is uncontroverted that CBE's solicitors engage directly in the programmatic charitable purposes of the organization) and any other amounts paid as salaries (even though it is uncontroverted that CBE's salaries include those of the very persons that carry out the organization's programs: an expert on nuclear power, a physicist, a biochemist,

a geneticist, an expert on electric utilities and a research associate).

By its prohibition of CBE's door-to-door and public solicitation, the Ordinance has cut off CBE's principal source of income, one vital to CBE's existence, and has prevented the information-gathering and -disseminating functions served by CBE's canvassers. It is plain that the First Amendment, as applied to local governments through the Fourteenth Amendment, prohibits such an absolute restraint on CBE's protected activities.

A. CBE's Dissemination of Information and Solicitation of Contributions Are Protected by the First Amendment.

Just such a combination of information dissemination and soliciting of contributions in door-to-door canvassing as CBE engages in has appeared in a number of cases before this Court, and this Court has consistently held such activity protected by the First Amendment.

Schneider v. *Irvington*, 308 U. S. 147 (1939) and *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940) both involved Jehovah's Witnesses who canvassed door-to-door, distributing literature and soliciting contributions. In both cases the canvassers were arrested and charged with violating state or local laws that, like the Ordinance, required permits as a condition to such canvassing. In both cases this Court reversed the convictions, holding that the laws restricting such canvassing violated the First Amendment.

In *Schneider* the unconstitutional ordinance provided that no person could canvass or solicit money without reporting to and obtaining a permit from the police. The police could refuse a permit if the applicant was not of good character or the project was "not free from fraud." The petitioner did not apply for a permit and was arrested and convicted. The lower court sustained the ordinance against the petitioner's First Amendment challenge, saying (as the Village does here) that the ordinance

protected citizens from disturbance and annoyance, prevented unidentified strangers from going door-to-door and carried out the town's interest in protecting its citizens from fraudulent solicitation. In reversing the conviction this Court noted that while municipalities may pass ordinances to protect citizens, such ordinances may not infringe First Amendment rights (308 U. S. at 161):

> Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.

This Court recognized that door-to-door canvassing can be "the most effective way of bringing [information] to the notice of individuals" (308 U. S. at 164).

Cantwell, too, was a permit case, this time arising under a statute that prohibited solicitation of contributions unless the cause was approved and a license issued by the Connecticut Secretary of Public Welfare, who would consider "whether such cause is a religious one or is a bona fide object of charity or philanthropy *and conforms to reasonable standards of efficiency and integrity* . . ." (310 U. S. at 302; emphasis added). Like the Village in the present case, the State in *Cantwell* declared the purpose of its statute was to protect against fraud and solicitation of funds by "purported charities." This Court struck down the statute, saying that although a State may regulate the time and place of solicitation, the law in question was not a *regulation*, it was a *prohibition*: Without the license from the Secretary of Public Welfare solicitation was prohibited, and the decision to grant or deny a permit was impermissibly left to the discretion of the State official (310 U. S. at 304, 307).

Although this Court in *Cantwell* discussed the religious nature of the canvassing involved there, *Cantwell* has been applied in the context of activities protected by other First Amendment guarantees. "The First Amendment gives freedom of mind the

same security as freedom of conscience." *Thomas* v. *Collins*, 323 U. S. 516, 531 (1945).

In a third case involving door-to-door canvassing, *Martin* v. *Struthers*, 319 U. S. 141 (1943), this Court recognized that governmental discretion in granting the right to canvass is not the only evil to be guarded against; an absolute prohibition involving no discretion on the part of an official can likewise be an unconstitutional restraint on the protected activity of door-to-door dissemination of information. In *Martin* the petitioner was convicted of violating an ordinance prohibiting all door-to-door distribution of literature. The city had decided that to protect its citizens against intrusion and crime, it would simply prohibit door-to-door activity. This, the Court said, infringed both the right of the petitioner to distribute and the right of the home owner to receive the message. Particularly significant for this case is the Court's recognition in *Martin* of the unique importance of door-to-door canvassing in preserving the political freedom the First Amendment is designed to safeguard, noting that the widespread use of door-to-door canvassing attests to its importance (319 U. S. at 145-47).

This Court's most recent consideration of door-to-door canvassing was in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610 (1976), where it again found that a municipal ordinance impermissibly restrained First Amendment rights exercised in such canvassing. The ordinance in *Hynes* required that persons "desiring to canvass, *solicit* or call from house to house" [emphasis added] for a "recognized charitable cause" or "political campaign" register for identification only. This Court held that the vagueness of "recognized" charity and the ambiguity of "identification" were constitutionally fatal.

Though this Court did not find it necessary to decide whether the ordinance might also be considered unconstitutional on other grounds, *Hynes* is squarely in the tradition of the previous cases, reaffirming the protection afforded canvassing under the

First Amendment.[2] It similarly held that an ordinance regulating solicitation as well as canvassing must meet the tests of strict scrutiny applied to restrictions of constitutionally protected rights (425 U. S. at 616):

> [T]his Court has in several cases reviewed attempts by municipalities to regulate activities like canvassing and soliciting. Regulation in this area "must be done and the restriction applied in such a manner as not to intrude upon the rights of free speech and free assembly."

In *Hynes* this Court recognized a municipality's power to regulate canvassing and soliciting, but only if such regulations were "reasonable," "narrowly drawn" and "regulate only with narrow specificity." Just as the ordinance in *Hynes* could not meet these requirements, the Schaumburg Ordinance must be held invalid for the reasons next discussed.

B. Any Attempted Restraint Like That of Schaumburg's Ordinance Must Survive Strict Scrutiny To Be Held Constitutional.

In this case the Village also seeks, as did the local governments in *Schneider*, *Cantwell*, *Martin* and *Hynes*, to act as surrogate for the purported protection of its residents against canvassing. But it claims that those cases are inapposite because the Ordinance is a "regulation" and does not vest impermissible discretion in governmental officials.

In fact the Ordinance is not a *regulation* but a *prohibition*. *Cantwell* articulated the distinction between a regulation of "the times, places and manner of soliciting," which if properly drawn might be constitutionally acceptable, and a licensing procedure (310 U. S. at 304):

> The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.

2. See especially the concurring opinion of Justice Brennan, 425 U. S. at 623-31.

It is just so under the Ordinance: Solicitation by CBE is completely prohibited if it fails to secure a permit. Section 22-20(g) of the Ordinance conditions the issuance of the permit, and thus the solicitation of funds by CBE, on CBE's having provided proof satisfactory to the Village that 75% of the proceeds of solicitation be used directly for the "charitable purpose" of CBE—not as CBE defines that purpose, and not as that purpose has been defined by the State of Illinois and the Internal Revenue Service in granting CBE status as a charitable organization, but rather as it purports to be defined by the Village's Ordinance.

Of necessity the attempt by government to prohibit the exercise of First Amendment rights must be judged by rigorous standards. Only a "narrowly-drawn ordinance"[3] that serves a "compelling state interest"[4] with "narrow specificity"[5] and is "closely drawn to avoid unnecessary abridgment"[6] can "survive the exacting scrutiny necessitated by a state-imposed restriction on freedom of speech."[7]

For the same reason, any presumption of validity of municipal ordinances that may exist in other areas must give way to a stricter analysis when applied to a statute having a potentially inhibiting effect on First Amendment protected activities. *Hynes*, 425 U. S. at 620 and at 628 (Justice Brennan concurring). As this Court stated in *Thomas* v. *Collins*, 323 U. S. at 530:

> [T]he usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensible democratic freedoms secured by the First Amendment.

3. *Hynes*, 425 U. S. at 617.

4. *NAACP* v. *Button*, 371 U. S. 415, 439 (1963); *Illinois State Board of Elections* v. *Socialist Workers Party*, ... U. S. ....., 59 L. Ed. 2d 230, 241 (February 22, 1979).

5. *NAACP* v. *Button*, 371 U. S. at 433, quoted in *Hynes*, 425 U. S. at 620.

6. *Buckley* v. *Valeo*, 424 U. S. 1, 25 (1976).

7. *First National Bank of Boston* v. *Bellotti*, 435 U. S. 765, 786 (1978).

As a result, "Any prior restraint on expression comes to this Court with a heavy presumption against its validity." *Organization for a Better Austin* v. *Keefe*, 402 U. S. 415, 419 (1971).

Against this body of authority the Village asserts (Pet. Br. 28-29) that "When freedom of speech is coupled with the solicitation of funds, additional public interests are involved which warrant a less restrictive view of the state's right to regulate such activities." That assertion ignores the fact that in *Schneider* the activity involved was both the distribution of literature *and* the solicitation of contributions; this Court held that the strict scrutiny standard applied (308 U. S. at 161).

And in *Cantwell* this Court emphasized that the state's power to regulate solicitation is still limited by the scrutiny applied to ordinances restricting First Amendment rights (310 U. S. at 304):

> In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.

More recent cases have consistently reaffirmed that First Amendment rights are protected even when the exercise of those rights is "in the form of a solicitation to pay or contribute money." *Bates* v. *State Bar of Arizona*, 433 U. S. 350, 364 (1977). The Village's attempted reliance (Pet. Br. 23) on *Breard* v. *Alexandria*, 341 U. S. 622 (1951) is misplaced. Not only did *Breard* deal with a wholly commercial solicitation, unlike solicitation by a not-for-profit organization like CBE, but even as to purely commercial speech the force of *Breard* has been sharply undercut. See *Virginia Pharmacy Board* v. *Virginia Consumer Council*, 425 U. S. 748, 759 (1976), referring to the "simplistic approach" in *Breard*.

In sum, the exercise of any of the rights protected by the First Amendment is so central to our form of government that an ordinance potentially prohibiting or restraining that exercise must be subjected to exacting scrutiny. The fact that such

exercise also involves a solicitation for money does not diminish its protection under the First Amendment. Any regulation that unreasonably restricts that exercise must succumb to the overriding interests identified in the First Amendment.

C. Schaumburg's Ordinance Violates the First Amendment Under Any Standard of Review.

But we need not fall victim to the tyranny of labels. The precise measuring stick is not critical, for it is plain that the Ordinance must fail whether tested by more or less rigorous constitutional standards. It conclusively outlaws, as outside the scope of "charitable purposes," any funds used for a congeries of activities that *in fact* directly implement such purposes:

1. All salaries or commissions paid to canvassers are excluded from the permitted 75% calculation. Yet it is undisputed that the canvassers paid by CBE are trained employees who, in addition to soliciting funds, exercise rights protected under even the most restrictive view of the First Amendment: They disseminate information and respond to inquiries about environmental questions (A. 6); they distribute literature and receive pollution complaints and grievances (A. 6 and 41); they accept signatures to a statement of citizens' support for CBE's program (A. 41). The Village has not disputed or denied that the canvassers perform these functions; rather the Village's Answer (A. 27) stated that these functions are not "relevant or material to the issues in this case." It is clear, however, that all of these activities go directly to CBE's charitable purpose (A. 40):

> to encourage and assist the conservation of the environment, to provide educational and informational materials and programs concerning the environment and, in general, to promote the protection of the environment.

2. All other salaries are similarly excluded as part of "administrative expenses of the organization." That exclusion is equally arbitrary, as exemplified by the salaries of the CBE in-house research staff, including an expert on nuclear power, a physicist, a biochemist, a geneticist, an expert on electric utilities and a research associate (A. 43). Environmental issues are complex and technical, and any organization aspiring to influence environmental issues effectively must have access to technical expertise. Employment of such experts clearly goes directly to CBE's charitable purpose.
3. All attorneys' fees are also excluded as part of "administrative expenses." Yet this Court in *NAACP* v. *Button*, 371 U. S. 415, 429 (1963) recognized that litigation can be a most effective form of political expression. Any litigation by CBE raising environmental issues is directly related to CBE's charitable purpose, and attorneys' fees incurred for such purposes cannot therefore automatically be assigned (as the Ordinance does) to the disqualifying zone subject to the 25% limit.
4. Advertising is also excluded as part of "administrative expenses." Yet advertising also may constitute a form of expression protected by the First Amendment, *Bigelow* v. *Virginia*, 421 U. S. 809 (1975); *First National Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978); and costs of advertising to convey protected expression may go directly to the organization's charitable purpose.

It should scarcely be necessary to multiply the examples. What the Village has effectively done, by its arbitrary characterization of a number of major categories of expenditures as "non-charitable," is to dictate by legislative fiat the kinds of admittedly charitable organizations that its residents will or will

not hear messages from. CBE is program-oriented—both its solicitors and its staff are direct purveyors of its substantive environmental programs. For that very reason it has been barred from solicitation in the Village under the Ordinance.

It is of course not CBE alone that is affected by the arbitrariness of the labels (or more accurately the mis-labels) established by the Ordinance. The Coalition of National Voluntary Organizations, which has sought leave to file as an amicus curiae in this case, has compiled statistics demonstrating that door-to-door solicitation is vital even for many "traditional" charities of nationwide scope (Amicus Br. 10-12) and that an arbitrary limit of 25% on salaries and administration expenses is an unreasonable restraint on all charities, particularly in light of the rising costs of fundraising and of performing charitable activities (Amicus Br. 8-9).

Even if the Ordinance had included *only* fundraising costs as the only category of expenditure subject to the more-than-25% disqualification, the same conclusion as to the arbitrariness of the ordinance is compelled in a most striking way by a published study of all charitable solicitation in Illinois. Malvern J. Gross, Jr., the partner of Price Waterhouse & Co. who is perhaps the principal writer on subjects of accounting for non-profit organizations,[8] published an article entitled "Costs of Fundraising" in the March 1975 issue of *Philanthropy Monthly*. The article reported the results of a computer analysis of all financial statements on file in the Illinois Attorney General's Office under the Illinois statute requiring such reporting by organizations soliciting contributions. That study analyzed the *largest* reporting organizations (those having total contributions of $100,000 or more) and reflected that 127 of them—which had raised funds totaling $185,800,000, or 42% of *all* funds raised in Illinois—had an *average* fund-raising cost of 26%! Thus

8. In addition to having written a number of articles on fund-raising costs and accounting, Mr. Gross is the co-author of *Financial and Accounting Guide for Nonprofit Organizations* (3d Ed. 1979).

more than one-half of even such organizations could not pass muster under the 75% requirement of the Ordinance. Can there be any question but that the "standard" established by the Ordinance, sought to be justified by the Village on a conclusive presumption of fraudulent fundraising activity if the 75% test is not met, is unreasonable and arbitrary?

It should not however be assumed that a prohibition like that of the Ordinance operates with a kind of impartial arbitrariness, for it is most punitive in its effect on smaller charities. "Door to door distribution of circulars is essential to the poorly financed causes of little people." *Martin* v. *Struthers*, 319 U. S. at 146. Justice Black there reviewed the history of door-to-door canvassing as a significant method of disseminating ideas (see also Justice Brennan's concurring opinion in *Hynes*, 425 U. S. at 624). Similarly, door-to-door solicitation of funds and the use of public ways to solicit funds are also vital to new and poorly financed causes and those causes whose political, social or religious beliefs make them less likely to receive funds from established philanthropists. Such groups may not be able to afford the more expensive means of fundraising, and must perforce rely on grass-roots support. For example, CBE is almost entirely supported by small contributions from individuals; its door-to-door canvass is the single most important source of its funds (A. 40).

Thus an arbitrary limit of 25% on salaries and administration expenses hits particularly hard at new and unpopular causes. The cost of starting, staffing and making the public aware of an organization (including advertising) in its first few years of existence can well exceed 25% of contributions. The newer organization is less able to depend on volunteer canvassers and thus may have to rely on paid canvassers to spread its message and solicit funds. Further, canvassers for an unpopular cause may have to be paid relatively high salaries. See the opinion below, 590 F. 2d at 225.

For all of the reasons discussed above, a prohibition of solicitation by any organization that fails to prove that 75% of contributions go directly to "charitable purposes"—as arbitrarily defined by the Ordinance to exclude such costs as salaries of staff and canvassers—constitutes an unreasonable restraint on that organization's right to solicit funds necessary for its survival.

That unreasonableness is particularly egregious as applied to a public action group such as CBE, which incurs costs characterized by Ordinance § 22-20(g) as "administrative" to fulfill its purposes: providing information about environmental issues and promoting protection of the environment. A public action group tackling a politically difficult issue like pollution control can expect to cross swords with established interests. Advocating strong positions on environmental issues may effectively deprive the CBE of large corporate and foundation donors on which a "traditional" charity may be able to depend. Solicitation of individual donors is thus even more important to a public interest organization than to a "traditional" charity.

Yet protection of citizen-supported organizations that advocate political opinions unpopular with established interests is one special constitutional role of the First Amendment. Any governmental action that threatens to silence such organizations by simultaneously cutting off their primary source of funds and their opportunity to reach individual citizens in their homes is constitutionally infirm. Ordinance § 22-20(g) unjustifiably and arbitrarily ignores the program functions served by such costs as canvassers' salaries and salaries of research personnel and thus unreasonably restrains CBE's activities protected by the First Amendment.

D. Schaumburg's Ordinance Is Not "Narrowly Drawn" To Serve a "Compelling State Interest."

Against all of the foregoing, the Village seeks to draw support for the 75% requirement in the Ordinance almost entirely from the Village's power to protect its citizens from fraudulent solicitation. Throughout its Brief the Village implies that any charitable organization that cannot prove that 75% of its contributions go directly to its "charitable purpose" is a fraud.[9]

Effectively the Village has created a conclusive presumption that any organization that devotes more than 25% of its funds to salaries or the other expenses listed in Ordinance § 22-20(g) is a fraud—even though those expenses are *actually* used to further the charitable goals of the organization. Any such conclusive presumption must be invalid: There is no necessary nexus between the 75% requirement and the prevention of fraud; certainly the "intimate relationship" necessary between the governmental interest purportedly sought to be protected and the means chosen to attain that interest is completely absent.

According to the Village (Pet. Br. 21 and 29), any organization that uses an aggregate of more than 25% of its income for all of the items listed in Ordinance § 22-20(g) cannot be a "bona-fide charitable organization" and can be excluded from soliciting in the Village because it is really a "commercial enterprise" and a "for profit venture."[10] The Village suggests no

9. Thus the Village refers to the Ordinance as a protection against "fraudulent and disruptive solicitation" (Pet. Br. 10). It asserts that it has an interest in "protecting its citizens from fraud by solicitors who would use the funds collected for purposes other than those expressly or impliedly represented" and "in identifying organizations where salaries paid are so large in relation to the services provided that the organization is actually a for-profit venture" (Pet. Br. 13). It similarly implies that organizations that do not meet the 75% requirement are "mere conduits for the commercial gain of their sponsors" (Pet. Br. 21) and "purportedly charitable organizations" (Pet. Br. 27) and "so-called charitable organizations" (Pet. Br. 31). See also Pet. Brief 28-30.

10. There is a Kafkaesque quality in this Village effort to attach a "for profit" label to CBE. Ordinance § 22-20 (involved in this case) is part of Article III, applicable to "charitable organizations" only. Article II (A. 18-22) of the same Ordinance applies to "for profit" solicitors; and if it were applied to any organization exercising First Amendment Rights, such as CBE, the permit provisions of Ordinance §§ 22-7 to 22-9 would fly directly in the teeth of *Schneider* v. *Irvington*, 308 U. S. 147 (1940). So it is that the Village seeks to substitute one unconstitutional restraint on CBE for another.

reason why 25% is an appropriate demarcation. Nor does it suggest any reason why it is reasonable to exclude all salaries of researchers and all the other costs specified in Section 22-20(g) from the concept of funds used directly for the "charitable purpose," notwithstanding that it is uncontested that CBE's paid canvassers perform program-related services as well as fund-raising.

There is of course the best of reasons for the Village's failure to address those problems—it simply cannot. Our discussion, in the preceding section of this Brief, of the study in *Philanthropy Monthly* demonstrates the irrationality of a rigid 75-25 ratio (even if the 25% were limited, as it is not under the Ordinance, to fundraising costs alone). In fact, the very effort of the numerous major voluntary organizations comprising The Coalition of National Voluntary Organizations to enter this case as amicus curiae compels the same conclusion.[11]

It is not surprising that the common sense of this issue is also echoed in sound accounting practices for non-profit organizations. Thus the American Institute of Certified Public Accountants has proposed a set of Accounting Principles and Reporting Practices for Nonprofit Organizations Not Covered by Existing AICPA Industry Audit Guides (1977 Discussion Draft). That proposal specifically recognizes and approves a functional classification of expenses for nonprofit organizations. Some part of the salaries of staff and costs of fundraising are properly considered "program services," that is costs of the charitable purpose of the organization.[12] That sensible and realistic treatment is

11. For example, one of the newspaper articles attached to the Village's Answer (A. 36) reports the salary and benefit costs of the American Cancer Society (Illinois Division) as 27% of funds collected.

12. Particularly notable is the treatment of fundraising costs when fundraising activities also serve a program function (Section 60 of the Discussion Draft):

> "When an organization combines the fund-raising function with a program function (i.e., as a piece of educational litera-

(Footnote continued on next page.)

rejected by the all-or-nothing (or really just nothing) stance taken by the Ordinance.

Most importantly on this score, the Village shows no connection (rational or otherwise) between the percentage of costs going to administrative expenses and the existence of any deception or fraud on the part of the organization. There is no showing, or even attempted showing, of fraud.[13] Instead, under the conclusive presumption of the Ordinance, the Village has irrefutably determined, without proof, that any organization unable to meet the 75% requirement is a "commercial venture" that "uses the cloak of charity to mask [its] pursuit of commercial gain" (Pet. Br. 29). The Ordinance excludes from the Village organizations like CBE (and large numbers of the major charitable organizations) on the conclusive presumption that they are "fraudulent," without their being given any opportunity to rebut that presumption.

This Court has held that the Constitution forbids a state to deny right or benefits on the basis of a "permanent and irrebutable presumption . . . when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination." *Vlandis* v. *Kline*, 412 U. S. 441, 452 (1973). Under this standard, the presumption inherent in the Ordinance is clearly invalid. It is

(Footnote continued from preceding page.)

> ture that combines a description of a program-related activity with a request for funds), the costs should be allocated to the program and fund-raising categories on the basis of the use made of the literature as determined from its content, the reasons for its distribution, and the audience to whom it is addressed."

13. It should be noted that Illinois has statutory registration and disclosure provisions regarding the solicitation of funds for charitable purposes (Ill. Rev. Stat. ch. 23, §§ 5101 et seq.), with which CBE has complied, that in part vest in the Illinois Attorney General the responsibility for enforcement and seeking injunctive relief against fraudulent solicitation (§ 5109). Under the Ordinance, any organization applying for a permit to solicit in the Village must submit a written statement from the Attorney General confirming the organization's compliance with the Illinois statute.

simply not true that expenses the Village conclusively deems excluded from the "charitable purpose" are not in fact used for that purpose; and the Village has "reasonable alternative means" of policing fraud.

In this respect the Village is not writing on a clean slate. All the arguments advanced by the Village have been raised repeatedly in support of laws prohibiting or regulating door-to-door canvassing and soliciting. While acknowledging the state's interest in protecting its citizens against fraud, crime and intrusion, this Court has struck down regulations that, like the Ordinance, intrude on constitutionally protected rights. In *Schneider* this Court stated that the prevention of fraudulent solicitation in the name of charity could not justify a municipal ordinance giving the police arbitrary power to determine what causes could canvass and solicit door-to-door (308 U. S. at 164):

> Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

Similarly, the Village asserts its right to protect its citizens from unwanted intrusion in their homes. But as this Court noted in *Martin* v. *Struthers* (319 U. S. at 144), a governmental action prohibiting canvassing by any group restricts the rights of those citizens who would want to receive CBE's message and to contribute, as well as restricting CBE's right to reach those citizens with its message and to ask for their support. Unlike a "trespass-after-warning" statute that enforces an individual homeowner's decision not to allow canvassers and "leaves the decision as to whether distributors of literature may lawfully call at a home . . . with the homeowner himself" (319 U. S. at

148), a prohibition on canvassing "substitutes the judgment of the community for the judgment of the individual householder" (319 U. S. at 144). This Court concluded in *Martin* that "since the dangers of distribution can so easily be controlled by traditional legal methods," the municipality's ordinance was an unreasonable restraint on First Amendment rights (319 U. S. at 147).

It is thus plain that the Ordinance is far from the "narrowly drawn regulation" of solicitation that this Court suggested in *Hynes* might be consistent with the First Amendment. Instead the Ordinance sets up a conclusive presumption that an organization is not a "bona fide charity," but a "commercial" "for profit venture," if it devotes more than 25% of its funds to expenses arbitrarily categorized by the Village as not directly for the organization's charitable purpose. That conclusive presumption is not based in fact, because the Village excludes from its definition of "charitable purpose" expenses that really are part of the charitable purpose and also because there is no necessary relationship between fraud and the percentage of funds devoted to administration. The goals the Village claims to seek can be achieved by ordinances that focus directly on whether any charity is a fraud, and by anti-trespassing ordinances. As the consequence of the Ordinance's conclusive presumption, CBE and other organizations are denied the right to engage in door-to-door canvassing in the Village; and because the Ordinance is clearly not drawn with "narrow specificity" to protect that right, it unreasonably restrains CBE's First Amendment rights.

E. Schaumburg's Ordinance Draws No Support from Applicable Case Law.

Petitioner's Brief 16-18 seeks to rely heavily on the decision of the Fifth Circuit in *National Foundation* v. *City of Fort Worth*, 415 F. 2d 41 (1969). Like the Village's other efforts to invoke supporting authority, that reliance is misplaced.

First, *National Foundation* was decided in 1969, before this Court's decision in *Hynes*. It is at least questionable whether the ordinance considered in *National Foundation* could meet the standards established in *Hynes*.[14]

However, the Village can derive no sustenance from the decision in *National Foundation* in any case, because the Schaumburg Ordinance creates an invalid conclusive presumption not present in the Fort Worth ordinance. The Fort Worth ordinance required an organization applying for a permit to submit information concerning the expected cost of solicitation in relation to the expected gross amount to be collected, and allowed the city to deny the permit if the ratio of cost of solicitation to collections was "excessive." Although the ordinance provided that a cost in excess of 20% of amount of collections "shall be deemed to be unreasonable," it allowed the applicant an opportunity to show that a cost higher than 20% was not unreasonable.

Indeed, the Fifth Circuit's decision rested on the fact that the Fort Worth ordinance did *not* create a fixed percentage requirement, as the Village's Ordinance here does (415 F. 2d at 46):

> A fixed percentage limitation on the costs of solicitation might be undesirable and inapplicable if applied to all types of charitable organizations. What may be proper in one situation may not be so in other situations.

14. The ordinance considered in National Foundation (415 F. 2d at 43-44) allowed the city's charitable solicitations commission to make "such investigation [of charities applying for permits to solicit] as shall by the commission be deemed necessary" to find out if the officers and agents of the applicant are responsible persons of good character with reputation for honesty and integrity. The ambiguity thus inherent in the ordinance violates the requirement set out in *Hynes* that the ordinance "provide explicit standards for those who apply it" (425 U. S. at 622). Further, the court in *National Foundation* applied only a test of reasonableness. It did not consider the ordinance in light of the standards set out in *Hynes*: that regulation in the area of canvassing and soliciting must be done with "narrow specificity," and that the restriction must be applied in such a manner as not to intrude upon First Amendment rights.

The clear implication of this statement is that a fixed percentage limitation such as the Village's § 22-20(g) would be unreasonable.

Moreover, the Fort Worth ordinance concerned a ratio of *costs of solicitation* to expected receipts. The Court in *National Foundation* did not consider the problem faced in the present case: whether an ordinance that prohibits solicitation unless a percentage of contributions goes directly to the charitable purpose may exclude from that charitable purpose salaries and other expenses that, in part at least, are used for communicating the organization's message and furthering its programs.

As the Seventh Circuit stated in this case (590 F. 2d at 226), the flexibility of the ordinance considered by the Fifth Circuit in *National Foundation* is not present in the Schaumburg Ordinance. Thus *National Foundation* gives no comfort to the conclusive presumption established by the Ordinance's rigid percentage requirement.

Nor does *People ex rel. Scott* v. *Police Hall of Fame*, 60 Ill. App. 3d 331 (1st Dist. 1978), also cited by the Village (Pet. Br. 31-32), approve the conclusive presumption of the Ordinance. In that case the Illinois Attorney General sued a charitable organization and its fundraisers for violation of Ill. Rev. Stat. ch. 23, § 5109(c), which requires that 75% of the gross receipts of a solicitation be used for charitable purposes.[15] Significantly "gross receipts" is defined by the statute as receipts *after the deduction* of the "legitimate and reasonable costs of services required with the fundraising event or program."

Unlike the Ordinance, the Illinois statute does not automatically presume that certain types of costs are not "for charitable purposes," and it does not create an irrebutable presumption that expenditure of more than 25% for fundraising

15. As already noted, the Ordinance requires that an organization seeking to solicit in Schaumburg present a written statement from the Illinois Attorney General that it has complied with this statute.

constitutes fraud. On the contrary, the Illinois statute allows a deduction of "legitimate and reasonable" expenses of *any* amount, applying the 75% requirement to "gross receipts" only after those expenses have been deducted. As the Illinois Appellate Court noted (60 Ill. App. 3d at 340), under the statute,

> If the Attorney General is able to prove that some of the costs deducted bore no relationship to the fund-raising efforts or were fabricated or illegal expenses, then such charges may not be deducted when computing gross receipts. There may be many factors to be considered in determining what constitutes legitimate and reasonable costs in a particular fund raising campaign.

Unlike the Illinois statute, the Ordinance allows no consideration of the "many factors" that may be considered in determining legitimate and reasonable fundraising expenses, substituting instead an unreasonable fixed percentage requirement.

More relevant for present purposes are decisions by the two courts (in addition to the courts below) that have considered ordinances less restrictive than Schaumburg's, but prohibiting soliciting where the cost of fundraising would exceed 25% of the amount raised. In each instance such courts, like the lower courts in this case, have found such ordinances unconstitutional. In *Carolina Action* v. *Pickard*, 420 F. Supp. 310 (W. D. N. C. 1976), the court temporarily enjoined enforcement of a 25% limitation (420 F. Supp. at 311):

> The ordinance is overbroad; the 25% limitation, as this Court views it, is unrelated to and does not protect against fraud or violence on the part of solicitors; such protection, in fact, is not its stated purpose.

This year the same court entered final judgment for the plaintiffs and permanently enjoined enforcement of the 25% limitation, 465 F. Supp. 576, 581 (W. D. N. C. 1979):

> The mandatory imposition of the 25% cost-of-solicitation rule set out in § 2-30 is overly broad. It stultifies protected speech, as it makes the ability to engage in neighborhood canvassing-solicitation dependent on a showing that plaintiff's representatives and ideas will be sufficiently popular to obtain at least $3 in contributions above every $1 expended in the canvass. Such a requirement is likely to operate most seriously to the detriment of those organizations espousing unusual or unpopular views and therefore most urgently in need of protection from encroachments on their First Amendment rights.

A similar ordinance considered in *Swearson* v. *Meyers*, 455 F. Supp. 88 (D. Kan. 1978), was found unconstitutionally vague. Although it was not necessary to decide if the ordinance was also overbroad, the Court suggested that a rewriting of the ordinance should consider that issue.

II.

THERE ARE NO GENUINE ISSUES OF MATERIAL FACT. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT.

The District Court granted summary judgment in favor of the Plaintiffs-Respondents, and the Court of Appeals affirmed that judgment. The Village now asks this Court to reverse that judgment, asserting (Pet. Br. 10):

> The Village was deprived of its opportunity to show that, in fact, the respondent was principally engaged in solicitation of funds for profit and was misusing the guise of environmental protection and free speech for its commercial gain.

That position is entirely groundless. Rule 56 of the Federal Rules of Civil Procedure requires that the Court grant summary judgment where there are no genuine issues of *material* fact. The Village's effort to overturn the summary judgment granted to the CBE must fail on two independent counts: The issue the Village now raises is not material to the constitutionality of the Ordinance, and in any event the Village did not contest below the issues for which it now seeks a trial.

A. The Ordinance Is Invalid on Its Face, and Therefore Evidence as to Whether CBE Would Be Denied a Permit Under a Valid Ordinance Is Not Material.

It is essential to the Village's argument in this respect to show, as the Village repeatedly asserts, that the Court of Appeals did not find the Ordinance unconstitutional on its face (Pet. Br. 33 and 34). But that linchpin is missing entirely, for the Village's assertion is simply contrary to the express finding of the Court of Appeals (590 F. 2d at 225):

> However, for the reasons stated below, the requirement is *on its face unreasonable* when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization. (Emphasis added.)

Thus the Court of Appeals squarely affirmed the District Court finding (A. 53) that the 75% requirement of the ordinance is invalid *on its face.*

In an effort to escape that plain language and specific holding, the Village seeks to play upon the functional distinction drawn by the Court of Appeals between "traditional charities" and "public interest groups" "more oriented toward advocacy" (590 F. 2d at 225). In view of the fact that "CBE holds itself out to be" the latter type of organization (590 F. 2d at 225), the Court held the Ordinance unconstitutional *on its face* when used to prohibit soliciting by such organizations, declining to rule on the constitutionality of the Ordinance as applied to "traditional charities." That is the only *material* distinction made in the Court of Appeals decision, and as to that distinction there are no controverted issues of fact.[16]

16. The Court of Appeals stated that the 75% requirement is invalid as applied to the type of organization (1) that "by its nature allegedly devotes a large portion of its efforts to information gather-

(Footnote continued on next page.)

Although the Village attempts to use that distinction as justification for a trial, it does not seek a trial on any issue material to that distinction (Pet. Br. 34). The Village does not contend that the trial it now asks would determine whether CBE was properly classified as a "public interest group" rather than a "traditional charity."

As the Court of Appeals correctly perceived, the issue is not whether CBE would have been denied a permit under an ordinance that was properly drawn to screen fraudulent solicitation (590 F. 2d at 223, quoting *NAACP* v. *Button,* 371 U. S. at 432). See also, *Bigelow* v. *Virginia,* 421 U. S. 809, 815-16 (1975), and cases cited therein. There are simply no issues of fact material to the constitutionality of the Ordinance on its face.

B. The Village's Request for Trial on the Activities of CBE's Canvassers Is Entirely Contrary to Its Position Below.

Before this Court the Village asserts that it was denied an opportunity to inquire into the question of "just what the CBE does that brings it within the purview of the First Amendment protection," contending that "the very nature of the organization is controverted in the pleadings" (Pet. Br. 40). That position is flatly contradicted by the record.

(Footnote continued from preceding page.)

ing and promotion of its objectives," and (2) "where its paid solicitors necessarily combine solicitation with other primary objectives of the organization" (590 F. 2d at 225). There is no dispute that CBE fits both of these criteria. Among the stated purposes of CBE is "to provide educational and informational materials and programs concerning the environment" (A. 40). CBE's verified Amended Complaint (A. 6) and the Affidavit of Larry Hoellwarth (A. 40-41) both set out facts showing that CBE's canvassers work to fulfill this purpose and "combine solicitation with other primary objectives." The Village did not dispute or deny these facts in the lower courts; on the contrary, the Village in its Answer took the position that the allegations of paragraph 3 of the Amended Complaint, concerning CBE's purposes and the activities of its canvassers, "even if true would not be relevant or material to the issues in this case . . ." (A. 27).

Paragraph 3 of CBE's verified Amended Complaint (A. 6) specifically alleged that CBE is a not-for-profit corporation registered and in good standing with the Illinois Attorney General's Charitable Trust Division and granted tax-exempt status by the United States Internal Revenue Service; that its purpose is to protect the Illinois environment; that incident to its purpose, CBE employs canvassers who distribute literature and answer questions on environmental topics, receive pollution complaints and perform other functions to further CBE's purposes, as well as soliciting contributions; and that the canvassing procedure is an effective means of informing the public that CBE is a source of assistance to deal with future problems of an environmental nature. Those facts are of course at the heart of CBE's First Amendment standing; they are the facts that were further fleshed out in the Hoellwarth affidavit (A. 40-41).

In its Answer (A. 26-27) the Village specifically made this case one of *law* and not of *fact:*

> [T]he facts alleged in said paragraph 3 even if true, would not be relevant or material to the issues in this case with the exception that the Defendants state on information and belief that the CBE employs "canvassers" who solicit funds for the purported purposes of the organization.

That position was simply the classic demurrer: "Even if the allegations of CBE are true in fact, it has no case on the law." Having itself characterized the factual statements as irrelevant and immaterial, the Village simply cannot now be heard to urge a remand of the case for trial of those very issues.

C. The Village Did Not Raise Any Issues of Fact Before the District Court.

Either of the reasons just discussed should be fully dispositive of the Village's argument on summary judgment. However, there is still another and equally dispositive reason to deny the Village's request for a trial: The Village failed to present any

factual material to the District Court to show that a contested issue of fact existed.

Rule 56(e) of the Federal Rules of Civil Procedure is explicit on this score:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Not only did the Village fail to file any affidavits or other factual material allowed by Rule 56 to oppose CBE's motion, but the Village failed even to *list* for the District Court the issues of fact it felt was contested, and the Village never raised as a material contested issue the alleged "commercial" nature of CBE.

1. CBE's Motion Showed That No Genuine Issue of Material Fact Existed.

In support of its motion for summary judgment, CBE submitted two affidavits:

> (a) Co-plaintiff Larry Hoellwarth (A. 40-41) described the purposes of CBE and the activities of its canvassers in receiving and disseminating information on environmental topics and gathering signatures of statement of citizens' support for CBE's program.
>
> (b) Kenneth Arway (A. 43) described the results of CBE's 1975 and 1976 certified audits and the personnel comprising CBE's in-house technical research staff.

These materials, supplementing CBE's verified Amended Complaint, establish the underlying facts supporting the summary judgment. Even assuming that the Village's now-asserted allegation of CBE's commercial nature were relevant, no inference of commercialism could be drawn from these materials.

2. The Village Did Not Raise Before the District Court the Issue for Which It Now Seeks Trial.

In response to CBE's motion the Village filed an Answer to Motion for Summary Judgment (A. 42), asserting only legal conclusions and denials. Its Answer did not even raise the issue the Village now seeks to assert—the alleged commercial nature of CBE. Clearly, Fed. R. Civ. P. 56(e) requires that the Village do more than simply assert that genuine issues of fact exist. For the benefit of the District Court the opponent to a motion for summary judgment must at least identify the issues of fact it believes to exist. The opponent may not wait until appeal to identify the issues:

> [A]ppellant may not overturn a summary judgment by raising here an issue of fact that was not plainly disclosed as a genuine issue in the trial court.

Ring Engineering Co. v. *Otis Elevator Co.*, 179 F. 2d 812 (D. C. Cir. 1950);[17] see also, 6 Moore, Federal Practice ¶ 56.11[3] at 56-247 to 56-248 (2d ed. 1976):

> [A party opposing summary judgment] may not hold back his evidence until trial; he must present sufficient materials to show that there is a triable issue.

While it is true that Rule 56(e) does not permit summary judgment if an issue of fact exists, it does require of the party opposing summary judgment that:

> . . . sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial.

First National Bank of Arizona v. *Cities Service Co.*, 391 U. S. 253, 289 (1968). Here, the Village presented to the trial court *no* material presenting a "differing version" of the facts.

17. The Seventh Circuit has also refused to disturb summary judgment when the opponent waited until appeal to point out the "specific facts" he believed showed the existence of an issue of fact. *Faulkner* v. *Baldwin Piano & Organ Co.*, 561 F. 2d 677, 683 (7th Cir. 1977).

Before this Court, the Village now suggests that two items indicate an issue of fact: first, its allegation in its Answer (¶ 43; A. 33) on information and belief that CBE is "primarily devoted to raising funds"; and second, the newspaper articles attached to the Village's Answer (A. 35-37). Although for the reasons already discussed this entire argument is not properly before this Court and should be dismissed out of hand, we will treat briefly with the two items.

As to the first of these, Rule 56(e) makes clear that allegations and denials are *not* sufficient to raise an issue of fact. Further, this Court has ruled that statements made on information and belief do not meet the requirement of Rule 56(e) that supporting and opposing affidavits shall be made on personal knowledge. Therefore, such statements, even if verified, must be disregarded on a motion for summary judgment. *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U. S. 827, 831 (1950).[18]

As to the second item, the newspaper articles attached to the Village's Answer are both legally and factually insufficient to raise a material question of fact. Such newspaper articles, unverified and pure hearsay, are not admissible materials to oppose a motion for summary judgment. *Lacey* v. *Lumber Mutual Fire Ins. Co. of Boston*, 554 F. 2d 1204 (1st Cir. 1977) (a memorandum is neither an affidavit nor evidence; therefore it does not meet Rule 56(e) standards).

18. Contrary to the assertion by the Village (Pet. Br. 38) CBE did controvert the allegations in the Village's affirmative defense. Mr. Arway's affidavit sets out the results of CBE's certified audits, clearly refuting the Village's allegation that "more than 60% of the funds collected [by CBE] have been spent for the benefit of employees." But under Rule 7(a) of the Federal Rules of Civil Procedure, no reply to affirmative defenses is required. Under Fed. R. Civ. P. 8(d), "Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided." Thus, the Village's statement that "the allegations in the answer as affirmative defenses, including the exhibits, must be taken as true" is incorrect as a matter of law.

But examining the articles relied on by the Village shows that they create no question of fact concerning the Village's alleged affirmative defense. The articles support CBE's position that its activities further its stated goals and are protected by the First Amendment.[19]

The articles likewise give no support to the Village's assertion that "CBE is primarily devoted to raising funds for the benefit and salary of its employees."[20] Thus, had the District Court improperly considered these unsupported articles it would have come to the conclusion that they raise no triable issue of fact.

This entire issue, sought to be raised as it is before this Court by the Village, is at best ill-founded. The Village used none of the extensive discovery tools available under the Federal Rules of Civil Procedure—for example, depositions, production of documents or interrogatories—to develop a factual record to oppose CBE's motion for summary judgment in the trial court. Nor did the Village apply to the trial court for relief under Rule 56(f), which allows the court to deny a motion for summary judgment

19. "Since its founding in 1971, CBE has developed a program of research and legal action primarily directed at forcing private industries and government agencies to clean up air and water pollution" (A. 35).

"Suburban Task Force reporters talked to more than 29 past and present employees of both organizations and found that all—even those who quit in internal disputes—believe that the organizations are making significant accomplishments" (A. 36).

"DONALD G. MULACK, chief of the Charitable Trusts and Solicitation Division of the Illinois attorney general's office, said in a recent interview that although his office is convinced of CBE's commitment to environmental issues, it continues to monitor the group's solicitation practices, registration of solicitors, and allocation of funds" (A. 36).

20. " 'When you look at the percentage of funds spent on programs,' Anderson said, 'these organizations [CBE and Public Action] are in the upper 50 percent of nonprofit organizations.' A former researcher for CBE said he had studied other citizen action groups and found CBE to be one of the most efficient" (A. 36).

or to allow discovery to be taken where an opponent cannot present opposing facts by affidavit.

The fact is simply that the Village made no effort to oppose summary judgment below, and that it did not even identify to the trial court as a relevant issue of fact the alleged commercial nature of CBE. Having made no presentation to the trial court to show that summary judgment was inappropriate, the Village should not be heard to complain on appeal that it was denied a trial.

CONCLUSION.

Schaumburg's Ordinance, both on its face and as applied to CBE, silences CBE's voice by barring it from communicating information and soliciting support—a result not countenanced by the First Amendment. Schaumburg insists that the Ordinance does not suffer from the vice of vagueness, because the 75% test is precise and does not vest impermissible discretion in its officials. If that is so, the precision has been purchased by creating the equally impermissible vice of overbreadth. Governmental discretion without standards is only one constitutionally prohibited defect; an unreasonable restraint that grants no discretion is also constitutionally invalid.

For the reasons stated in this Brief, the judgment of the courts below should be affirmed.

Respectfully submitted,

MILTON I. SHADUR,
GERALDINE SOAT BROWN,
208 South LaSalle Street,
Chicago, Illinois 60604,
(312) 263-3700,
Attorneys for Respondents.

Of Counsel:
DEVOE, SHADUR & KRUPP.
DAVID GOLDBERGER, ESQ.,
Roger Baldwin Foundation
of ACLU, Inc.,
5 South Wabash Avenue,
Chicago, Illinois 60603.

FOR ARGUMENT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

VILLAGE OF SCHAUMBURG,
Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioner.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF.

STATEMENT OF THE CASE.

The respondents in their brief have attempted to add to the statement of the case which appeared in our original brief. In so doing, they have twisted the pleadings which form the basis for the trial court's erroneous summary judgment. For example, they rely on paragraph 3 of the amended complaint to describe the nature of the respondents' activities. In our answer, we alleged lack of knowledge sufficient to form a belief as to the truth of the allegations. The character of the respondents' activities thus remains a matter of proof (A-26). We conceded that the respondents employed canvassers who solicit funds. The

only issue in this case is the validity of the 75% requirement; even if CBE was a not-for-profit corporation that distributed literature on environmental questions, answered questions and solicited contributions, such fact would not conclusively determine the validity of the 75% requirement.

Reliance on Hoellwarth's affidavit is misplaced. The affidavit does nothing but restate the allegations of the complaint and is composed largely of mere conclusions. The only substantive question before this court is whether a 75% requirement, as applied to this specific organization, impinges upon First Amendment rights. Such a question requires an evidentiary hearing. The procedural question is whether a controverted issue of fact requires a trial rather than a summary judgment.

The respondents also refer the court to a supplemental affidavit prepared by a Kenneth R. Arway. This affidavit was not part of the pleadings upon which the motion for summary judgment was granted. Instead, it was attached to a reply memorandum. The so-called description of CBE's in-house research staff consists of one sentence in Mr. Arway's affidavit. We suggest that an affidavit attached to a memorandum of law is not properly before the court on a motion for summary judgment. We further suggest that the respondents' argument as to its extensive research staff is simply not supported by the record.

We do not know the nature of the research, the amount of time each purported staff member devotes to the organization, or what, in fact, the "in-house research staff" actually does. To assert that certain audits purportedly show a percentage of income spent on fund raising and another percentage on administration is absolutely meaningless without having at hand the audits in question and an opportunity to cross-examine the auditors who prepared the reports. Mr. Arway did not purport to be an auditor or a member of the research staff. The affidavit dated December 23, 1977 was clearly an afterthought to the motion of summary judgment which had been filed on December 7, 1977.

The Village offered affirmative defenses to the effect that CBE was primarily devoted to raising funds for the benefit and salaries of its employees and that its charitable purposes were negligible (A 33). The respondents argue that no proof of these allegations was ever presented. The granting of the motion for summary judgment precluded the presentation of such proof. The material facts which were put in issue by the pleadings were the very nature of the respondents' operation and its use of funds.

It must be emphasized that the Seventh Circuit, in affirming the District Court, did not hold the 75% requirement unconstitutional on its face but merely as applied to the respondent. The Court of Appeals specifically declined to decide the reasonableness of the 75% requirement as applied to solicitation by the more "traditional charitable organizations." It went on to say at 500 F. 2d 225:

> "However, for the reasons stated below, the requirement is on its face unreasonable when applied to an organization which by its nature *allegedly* devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization." (Emphasis added.)

Thus, the Court of Appeals recognized that the real issue was the reasonableness of the 75% requirement as applied to the respondent. It is further recognized that the character of the organization was merely alleged and not proven. We suggest that the Court of Appeals' opinion in itself was internally inconsistent. Having determined that the only issue was "reasonableness" and that the nature of the organization and its activities was critical, the court nevertheless proceeded to foreclose an inquiry into the reasonableness of the requirement and the nature of the organization by granting the motion for summary judgment.

ARGUMENT.

I.

SCHAUMBURG'S CHARITABLE SOLICITATION ORDINANCE IS CONSTITUTIONAL BOTH ON ITS FACE AND AS APPLIED TO CBE.

The respondents, in their brief, paint with a broad brush what is essentially a narrow question. That question is whether the 75% requirement is unconstitutional on its face or as applied to CBE. The respondents say that this is a classic case for First Amendment protection yet their entire brief fails in any manner to demonstrate how the first Amendment is in any way violated by the ordinance in question.

The fact that CBE purports to be committed to the preservation of the environment does not exempt it from the reasonable requirements of the Schaumburg ordinance. The preservation of the environment may in fact require scientific and technical expertise, but there is nothing in the record to show that CBE has such scientific or technical expertise. We do not suggest that the First Amendment applies only to those who possess such expertise. The fact that CBE is a citizen's organization and allegedly is supported entirely by small contributions by individuals also does not, of itself, bring its door-to-door solicitation activities within the protection of the Frist Amendment.

We have the naked allegations of Mr. Arway's laconic affidavit to the effect that CBE research staff consists, in part, of certain experts, but we do not know whether these experts are, in fact, salaried and if so, what their salaries are, much less how much time they contribute to CBE's activities or what they actually do. There is, of course, nothing in the record to show that Schaumburg's refusal to permit CBE's door-to-door and public solicitation has cut off CBE's principal source of income.

A. The Ordinance Does Not Violate the First Amendment as Applied to CBE's Activities.

Nowhere does the Constitution or the decisions of this court indicate that the First Amendment removes from local governments their police power to protect their citizens from crime and undue annoyance by regulating soliciting and canvassing. As this court has recently recognized in *Hynes* v. *Mayor of Oradell,* 425 U. S. 619, 48 L. Ed. 2d 243: "There is of course no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose . . ."

In their brief, the respondents place great reliance upon *Schneider* v. *Irvington,* 308 U. S. 147 (1939) and *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940). Both cases involve the religious freedom of Jehovah Witnesses who were canvassing door-to-door, distributing literature, and soliciting contributions. Such activities were an integral part of the Witnesses' religious belief and practice. We have previously distinguished these cases in our brief. We pointed out that in these cases as in *Martin* v. *Struthers,* 319 U. S. 141, this court determined that the ordinances in question involved administrative discretion without standards. The court considered *Cantwell* at length in the *Oradell* case and clearly distinguished *Schneider* and *Martin.* Those cases involved ordinances which required permits without standards and vested unbridled discretion in an administrative officer or simply prevented canvassing completely. The Schaumburg ordinance is not subject to those infirmities.

In *Schneider* this court recognized that unbridbled discretion had been placed in police authorities to determine who could canvass. The court at 308 U. S. 147, 164 said:

> "In the end his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion."

The court insisted that a municipality cannot require all those who wish to disseminate ideas to present them first to police

authorities for their consideration and approval "with a discretion in the police to say some ideas may, while other may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house." The court, however, said at 165:

> "We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires."

It should, of course, be emphasized that the Schaumburg ordinance is netural on its face and neutral in its administration. Neither the police authorities nor the Village Board purports to pass upon the nature of the ideas sought to be disseminated. All organizations, regardless of their point of view, are treated equally. Nobody is censoring the views of the CBE. The ordinance sets forth clear standards which, when followed, require the issuance of a permit.

Leaving aside the question of the particular nature of the religious solicitation involved in *Schneider,* it is clear that *Schneider* is not authority for holding that the municipality is without authority to enact an ordinance with precise and strict standards which do not involve the exercise of discretion or a power to censor any ideas. The Village is not involved in legislative preference or the imposition of its beliefs respecting matters of public convenience. It is instead attempting to protect citizens from uninvited and unwanted disturbance in the most private of all sanctuaries, the home.

The case of *Cantwell* v. *Connecticut,* 310 U. S. 296 also dealt with the exercise of freedom of religion. In that case, the court clearly did not hold that the type of regulation present here would in any manner violate the First Amendment. As a matter of fact, this court carefully considered *Cantwell* in the *Hynes* opinion as, in fact, supporting municipal authority to regulate solicitation. The statute in *Cantwell,* as construed, vested total and unrestricted discretion in the Secretary of the Public Welfare Council of Connecticut to issue a permit. He was empowered

to determine whether the cause was in fact a religious one and he was not to issue a certificate as a matter of course. Here again, was a situation in which an administrative officer was granted authority to act purely upon his own discretion without standards.

The respondents misstate the thrust of the court's opinion in *Cantwell* when, in their brief, they say that the law in question was not a regulation, but a prohibition. The decision was based upon the unbridled discretion vested in the Secretary of the Public Welfare Council to determine whether the cause was a religious one, was a bonafide object of charity, and whether it conformed to reasonable standards of efficiency and integrity.

The ordinance in *Martin* v. *Struthers,* 319 U. S. 141 (1943) was a total prohibition on the distribution of handbills, circulars, or other advertisements by going from door-to-door. The court held the ordinance invalid as applied to Jehovah's Witnesses who went to the homes of strangers in order to distribute leaflets advertising a religious meeting.

Again, it must be emphasized that the Schaumburg ordinance is not a prohibition on door-to-door distribution of literature or dissemination of ideas. It is a means of protecting the citizens of the community from individuals who are, in fact, soliciting funds for organizations purportedly charitable in character, but utilizing a substantial portion of those funds for non-charitable purposes. There is nothing in the Schaumburg ordinance that would have prohibited Thelma Martin from going from door-to-door and delivering a leaflet advertising a religious meeting.

This court has recognized in *Hynes* and *Breard* that the Constitution, and most particularly the First Amendment, does not give unbridled license for any person to go on the private premises of another regardless of the political or religious nature of the doctrines sought to be disseminated. In keeping with this court's opinion in *Hynes,* the Schaumburg ordinance is a valid exercise of the police power. It is a restriction which is applied in a manner so as not to intrude upon the rights of free speech.

The ordinance is in fact reasonably and narrowly drawn and the respondents' argument to the contrary is without merit.

B. The Schaumburg Ordinance Is Valid Even if Strict Scrutiny Is Applied.

The respondents argue that the Village here seeks to act as a surrogate for the protection of its residents against canvassing. The respondents ignore the fact that the ordinance in question relates to solicitation of funds for "charitable" purposes. It does not seek in any manner to prevent the exercise of freedom of speech. It does not constitute prior restraint on speech. It simply requires that those who go from door-to-door or utilize the public streets for the solicitation of funds for a purported charitable purpose must in fact utilize a substantial portion of those funds for the charitable purposes for which the organization was created.

To argue as the respondents do that the Village is without authority to protect its citizens from misrepresentation in solicitations in the name of charity is to fly in the face of this court's repeated opinions to the contrary. It is absolutely true that an organization which fails to meet the requirements of the ordinance cannot get a permit to solicit contributions on the public streets or from door-to-door as a "charitable" organization. We suggest that it is an exercise in semantics, however, to label the ordinance as a "prohibition" rather than a regulation.

The Village has the unquestioned authority to make certain that those who intrude upon the privacy of its citizens in the name of charity are in fact what they purport to be. The ordinance does not give to the Village the right to decide whether or not an organization should be allowed to solicit because of the nature of its charitable objectives. It enables the Village to protect its citizens from those who are using the guise of charity to commit potential nuisances and disturb the citizens in the quiet enjoyment of their homes.

The Village Board of the Village of Schaumburg constitutes the elected representatives of its citizenry. It has adopted the ordinance in question as an exercise of its legislative discretion. The ordinance was adopted because of the needs and demands of the citizens. It was adopted in response to a serious and continuing problem in the community. We suggest that if the community does not wish such protection, the Village Board, in response to that opinion, would act expeditiously to repeal such an ordinance. We suggest that it was not up to a Federal Court to prohibit the Village from exercising its lawful legislative discretion.

The respondents argue that solicitation by CBE is completely prohibited if it fails to secure a permit. An individual who fails to secure a driver's license is prohibited from driving a motor vehicle. To argue that failure to comply wtih reasonable regulations intended to protect the public constitutes a violation of Constitutional rights is to ignore the entire system of police power regulation which makes possible a reasonably orderly and safe community.

The test of determining whether at least 75% of the proceeds of the solicitation will be used directly for the charitable purposes of the organization can be met by the submission of a certified audit. The State itself requires such a certified audit. But the Village does not insist on an audit, but any other alternate comparable evidence that may demonstrate the facts. We suggest that as the *National Foundation* case indicates, it is not unreasonable to require that when the public streets and the private domiciles of the Village's citizens are to be used for an uninvited solicitation of funds, the proceeds should at least be substantially utilized for the charitable purposes involved.

The respondents insist that First Amendment rights must be judged by rigorous standards; we agree. We do not believe that a fair reading of the First Amendment however includes an unrestricted Constitutional right to solicit funds for charitable purposes by going from door-to-door. In *Hynes* v. *Mayor of*

Oradell, 426 U. S. 610, 48 L. Ed. 2d 243, this court at page 616 considered various cases involving attempts by municipalities to regulate canvassing and soliciting. The court said:

> "But in these very cases, the court has consistently recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing. A narrowly drawn ordinance, that does not vest in municipal officials the undefined power to determine what messages residents will hear, may serve these important interests without running afoul of the first amendment."

We suggest that our ordinance is in fact narrowly drawn. The ordinance in question does not constitute a prior restraint on expression. It regulates the circumstances under which persons seeking money may go from door-to-door and use the public streets of the community. The protection of the public from unwanted and unsolicited disturbances by persons who are utilizing the solicitation funds for other than charitable purposes does not constitute any threat to "indispensable democratic freedoms secured by the First Amendment."

We do not contend that the Village has the authority to enact an ordinance which would unduly infringe freedom of speech. The ordinance in question simply does not constitute the infringement of any protected freedom. Incidentally, it should be emphasized *Schneider* involved canvassing which was an integral part of the religious beliefs of the individuals involved. To equate such protected conduct with the paid solicitors of CBE is to do violence to the concept of religious freedom.

The cases cited by the respondents in their brief simply do not lend any credence to the concept that an ordinance regulating the solicitation of funds is subject to strict scrutiny. But even if the test of strict scrutiny is applied, the ordinance in question here meets that test.

The *Bates* case which sanctioned commercial advertising by lawyers and relied upon the First Amendment is cited by the

respondents. Legal advertising, of course, is not the issue here. The Village of Schaumburgh has not attempted to prevent CBE from advertising and soliciting funds through the mails or by radio, television, or any one of the myriad other methods by which modern fund-raising is carried on. What it seeks to do is merely require that charitable contributions obtained by solicitation in the Village be used for charitable purposes. Such a simple and forthright objective, when its operation is confined to the narrow area encompassed by this ordinance, is not violative of anything which this court has said in the *Bates* case or any other decisions cited by the respondents.

The *Virginia Pharmacy Board* case involves advertising the price of drugs. It clearly has no relevance to the issues in the case at bar. The remarks about *Breard* contained in *Virginia Pharmacy* have to do with the application of the First Amendment to purely commercial speech. We recognize that the court has extended the First Amendment to some commercial as well as non-commercial speech; but, this court has not chosen to overrule *Breard* and as recently as in the *Lehman* case, has asserted its validity and relied upon it. Again, we must emphasize the Schaumburg ordinance is not intended nor structured to interfere with anyone's freedom of speech. To the extent that *Breard* recognizes that door-to-door solicitation is properly subject to municipal regulation, it remains applicable to the case at bar.

In the recent case of *Friedman* v. *Rogers*, ... U. S. ....., 59 L. Ed. 2d 100 (1979), this court recognized that *Virginia Pharmacy* and *Bates* did not mean that commercial speech was free from regulation under the First Amendment. The court emphasized that restrictions on time, place and manner of expression are permissible and that untruthful, deceptive or misleading speech is not protected by the First Amendment. At 59 L. Ed. 2d 100, 109, the court said:

> "In both Virginia Pharmacy and Bates, we were careful to emphasize that '(s)ome forms of commercial speech reg-

ulation are surely permissible.' Virginia Pharmacy, supra, at 770, 48 L Ed 2d 346, 96 S Ct 1817; accord, Bates, supra, at 383, 53 L Ed 2d 810, 97 S Ct 2691, 51 Ohio Misc 1, 5 Ohio Ops 3d 60. For example, restrictions on the time, place or manner of expression are permissible provided that 'they are imposed without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in so doing they leave open ample alternative channels for communication of the information.' Virginia Pharmacy, supra, at 771, 48 L Ed 2d 346, 96 S Ct 1817. Equally permissible are restrictions on false, deceptive, and misleading commercial speech.

> 'Untruthful speech, commercial or otherwise, has never been protected for its own sake. Gertz v. Robert Welch, Inc. 418 US 323, 340, (41 L Ed 2d 789, 94 S Ct 2997) (1974); Konigsberg v. State Bar, 366 US 36, 49, and n 10, (6 L Ed 2d 105, 81 S Ct 997) (1961). Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We forsee no obstacle to a State's dealing effectively with this problem. The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream of commercial information flows cleanly as well as freely.' Virginia Pharmacy, supra, at 771-772, 48 L Ed 2d 346, 96 S Ct 1817; accord, Bates, supra, at 383, 53 L Ed 2d 810, 97 S Ct 2691, 51 Ohio Misc 1, 5 Ohio Ops 3d 60."

This court in *Friedman* cited *Ohralik* v. *Ohio State Bar Association,* 436 U. S. 447, 56 L. Ed. 2d 444, 98 S. Ct. 1912 (1978) in recognizing the power of the state to regulate activities which were commercial in nature even though speech was involved. At page 455, the court said:

> "Expression concerning purely commercial transactions has come within the ambit of the Amendment's protection only recently. In rejecting the notion that such speech 'is wholly outside the protection of the First Amendment.' Virginia Pharmacy, supra, at 761, 48 L Ed 2d 346, 96 S Ct 1817, we were careful not to hold 'that it is wholly undifferentiable from other forms' of speech. 425 US, at 771 n 24, 48 L Ed 2d 346, 96 S Ct 1817. We have not discarded the 'common-sense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. Ibid. To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression.
>
> Moreover, 'it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.' Giboney v. Empire Storage & Ice Co. 336 US 490, 502, 93 L Ed 834, 69 S Ct 684 (1949)."

The respondents seek to transform what is a regulation of soliciting for financial contributions into an attack on freedom of speech. The ordinance clearly imposes no unconstitutional burden on the exercise of such a right. The ordinance in question is a reasonable exercise of police power based upon the needs of the community and is narrowly drawn in order to protect the constitutional rights of all.

C. The Schaumburg Ordinance Does Not Violate the First Amendment.

The respondents argue that regardless of the measuring stick applied, the Schaumburg ordinance violates the First Amendment. From what has been said above, it is clear that the ordinance is, in fact, narrowly drawn, does not grant unbridled

discretion to an administrative officer, and in no way impinges upon the First Amendment.

The arguments advanced by the respondent, in fact, are convincing evidence as to why an evidentiary hearing should have been held in this matter to test the reasonableness of the ordinance as applied to CBE. There is no evidence of the exercising of any rights protected under the First Amendment. The character of the information disseminated is a matter of proof. The Village has stated clearly it had no knowledge sufficient to assess the validity of the allegations, respecting the activities of the respondents. It alleged affirmatively that its funds in fact were primarily for the salaries and benefit of its employees. These were matters which go to the very heart of the controversy and should have been subjected to the rigor of a trial and cross-examination.

Further reference is made to salaries of the in-house research staff. The pleadings fail to indicate whether or not these are "dollar-a-year men" or what the character of their employment is for CBE. The mere fact that individuals purporting to have such expertise were alleged to be on the payroll in an affidavit submitted as an attachment to a reply memorandum of law, certainly is not conclusive evidence of what the factual situation is. The fact that attorneys' fees and advertising expenses are included as part of "administrative expenses" is not per se unreasonable. We are entitled to ascertain the nature of such advertising expenses and attorneys' fees.

It is, of course, not true that this ordinance keeps any Schaumburg resident from hearing the message of CBE. It merely requires that CBE meet the reasonable standards which would permit it to solicit funds in the Village.

The respondents also argue at length with respect to the effect on other organizations and reference is made to an amicus brief which this court has not authorized. Reference is made to an article in an obscure publication by an unknown author whose credentials and conclusions no where appear in the

record. The fact of the matter is that on a trial of this cause, the Village would be prepared to show that a substantial number of charitable organizations, some nationwide in scope, have easily met the requirements of the Schaumburg ordinance and, therefore, automatically received the necessary permit.

The records of the Village of Schaumburg indicate that numerous national and local organizations have had no problem in meeting the requirements of the ordinance including the 75% requirement at issue here. Among the best known of such organizations are The City of Hope, The United Cerebral Palsy Association of Chicago, The Heart Association of North Cook County, the American Lebanese Syrian Associated Charities, Inc. (St. Jude Hospital), The National Foundation March of Dimes, The Juvenile Diabetes Foundation, The American Cancer Society, and The Salvation Army. Included as an appendix to this brief is a partial list of the best known organizations which have met the tests of this ordinance and the date of their original approval. It should be noted that since the District Court's original order, the Village has not been enforcing the section in question.

In addition to these major organizations, a plethora of local charities, both large and small, have complied with the requirements of the ordinance and particularly with the controverted 75% requirment.

Contrary to statements which appear in the respondents' brief, The American Cancer Society financial statements indicated that under the terms of the Schaumburg ordinance, the adminstrative costs of the American Cancer Society of Northern Illinois amounted to approximately 17% of the revenues. The Juvenile Diabetes Foundation spent 10% for administrative costs. In each instance, these major charitable organizations had no problems in submitting financial statements indicating clearly that more than 75% of the funds collected were used for charitable purposes. The Village was prepared to present this evidence and more relating to the reasonableness of the 75% requirement, but was precluded from doing so by the summary judgment.

The respondents' arguments that this ordinance amounts to a prohibition or is unreasonable is thus without foundation. That numerous charitable organizations with a variety of objectives have meet the requirements and have received permits is a factual refutation of the unsupported arguments contained in the respondents' brief. In any event, we are not prepared to accept the respondents' arguments based upon an obscure magazine article that the ordinance is arbitrary because it requires that the funds collected be devoted to the purpose for which the charitable organization was created. The history of the ordinance demonstrates conclusively that it has not barred legitimate charitable solicitation in Schaumburg.

The respondents also argue that the ordinance somehow creates a conclusive presumption of fraudulent fund-raising. The ordinance, of course, does no such thing. It simply sets up definite and reasonable conditions which must be met it an organization is to avail itself of public solicitation for funds in a purportedly charitable cause. There is, in fact, no evidence in the record that this ordinance operates to deprive the smaller charity of a right which is given to a larger organization. It would appear that organizations without extensive overhead or large fixed costs will more likely fall within the standards of the ordinance, rather than the kind of top-heavy professional philanthropies that sought to file their amicus briefs in this cause.

The history of the Schaumburg ordinance demonstrates conclusively that small charitable groups have had no problems in the Village. Among those who have solicited funds, under the ordinance, were such groups as the Schaumburg High School VIP Club (a parents' organization), The Golden Knights (a drill team), St. Peter's Luthern School, and the Schaumburg Athletic Association. These organizations, of course, do not rely on high priced paid solicitors and had no problems in meeting the Schaumburg ordinance.

CBE apparently admits that it relies upon its paid canvassers but it clearly does not indicate that to the general public. Instead,

CBE offers itself as an organization dedicated to preserving the environment rather than a fund-raising mechanism for the benefit of its canvassers and a few professional administrators.

It is hardly likely that the 25% limit hits particularly hard at new and unpopular causes. In fact, there is nothing in the record to support this contention and as a matter of logic, the facts are probably contrary. The fact that canvassers for an unpopular cause may have to be paid relatively high salaries, of course, has nothing to do with the validity or reasonableness of the ordinance in question.

The respondents classify themselves as a public action group which apparently incurs high "administrative costs." They classify as "politically difficult" the issue of pollution control. To favor improving the environment is as politically difficult as favoring motherhood and apple pie. The fact that CBE may not receive large corporate or foundation donations does not bear upon the legality of an ordinance which on its face is purely neutral.

The respondent seeks to cloak itself in the guise of a citizen supported organization that advocates political opinions unpopular with established interests. There is nothing in the record to indicate that characterization as a correct one. The Village has no intent or desire to in any way interfere with the advocacy of political opinions of any character. That is not the purpose nor the effect of the ordinance in question. The Constitution does not require that the citizens of Schaumburg be subjected to the invasion of their homes by a fund-raising group simply because the group styles itself as a "citizen supported organization that advocates political opinions unpopular with established interests." The First Amendment makes no distinctions with respect to its application, but it is not to be used as a subterfuge to frustrate the reasonable exercise of the police power.

D. The Ordinance Is Narrowly Drawn.

Schaumburg's ordinance is sufficiently narrow to sustain its constitutionality. The principle that a municipality has the right to require solicitors to establish their identity and their authority to act for the cause which they purport to represent is beyond question. In *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 48 L. Ed. 2d 243, this court reviewed ordinances dealing with house-to-house canvassers and solicitors and commented upon the significance of the various cases. At page 618, the court said:

> "In reaching these results, the Court acknowledged the valid and important interests these ordinances sought to serve. In Martin, supra, at 144 87 L Ed 1313, 63 S Ct 862, Mr. Justice Black writing for the Court stated:
>
> > 'Ordinances of the sort now before us may be aimed at the protection of the householders from annoyance, including intrusion upon the hours of rest, and at the prevention of crime. Constant callers, whether selling pots or distributing leaflets, may lessen the peaceful enjoyment of a home as much as a neighborhood glue factory or railroad yard which zoning ordinances may prohibit . . .
> >
> > In addition, burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later. Crime prevention may thus be the purpose of regulatory ordinances.'
>
> As Mr. Justice Black suggested, the lone housewife has no way of knowing whether the purposes of the putative solicitor are benign or malignant, and even an innocuous caller 'may lessen the peaceful enjoyment of a home.' Ibid. In his view, a municipality 'can by identification devices' regulate canvassers in order to deter criminal conduct by persons 'posing as canvassers,' id., at 148, 87 L Ed 1313, 63 S Ct 862, relying on the Court's statement in Cantwell, supra, at 306, 84 L Ed 1213, 60 S Ct 900, 128 ALR 1352:

> 'Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicy to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.' "

Thus the court has explicitly recognized the vital municipal interests at stake. The argument of the respondent that the Village has, by the ordinance in question, created a conclusive presumption that any organization devoting more than 25% of its funds to other than charitable purposes is a fraud, simply is irrelevant to the issues. Clearly the prevention of fraud is a proper objective of ordinances restricting purportedly charitable solicitations, but it is not the only basis for the exercise of the police power.

Other valid objectives include the protection of peaceful enjoyment of one's home and the basic right to be left alone. Certainly the Village has the right and the authority to extend the right to solicit for charitable purposes only to those organizations which in fact devote a substantial portion of the funds received to the charitable purpose for which the group is organized.

The respondents suggest that there is no reason why 25% is an appropriate demarcation. Suffice it to say that the Circuit Court of Appeals in the case of *National Foundation* v. *City of Ft. Worth,* 415 F. 2d 41, found that a 20% figure was an appropriate demarcation. The General Assembly of the State of Illinois in its charitable solicitation statute has also chosen a 25% line of demarcation. We suggest that the 75% requirement is a reasonable exercise of legislative discretion. Undoubtedly, the respondents would prefer that 100% of the proceeds of solicitation should go to their "administrative" expenses. It is up to the municipality to draw the line.

The very fact that a plethora of charitable organizations, both large and small, have been able to operate freely and lawfully

within the 75% requirement of the Schaumburg ordinance is ample proof of the reasonableness of that requirement. At the very least, the question of reasonableness was not to be decided on a motion for summary judgment. One pragmatic test is whether or not charitable organizations can, in fact, meet the requirement in question. The history of the ordinance indicates conclusively that this requirement can be met and has been met without undue difficulty.

The citizens of Schaumburg are thus assured that when a stranger knocks on their doors and asks for money, the charitable purpose for which the funds are asked will in fact be the beneficiary.

The respondents in their brief go beyond the record to refer to a study in something called, "Philanthropy Monthly" and also make reference to the fact that numerous voluntary organizations have sought to enter the case as amicus curiae. The fact that the Coalition of National Voluntary Organizations includes many organizations which are actively soliciting in Schaumburg under the provisions of the Schaumburg ordinance gives lie to the very argument that the respondents and the amicus seeks to make.

Nor are we impressed with the fact, if it is a fact, that the American Institute of Certified Public Accountants has proposed a discussion draft of accounting principles and reporting practices for non-profit organizations. Here again, the respondents are seeking to rely upon material not in the record and having no relevance to the issues before the court.

The respondents continue to raise a strawman when they argue that the Village has shown no connection between the percentage of costs going to administrative expenses and the existence of any deception or fraud on the part of the organization. It would appear obvious on its face that a so-called "charitable organization" is practicing deception if the organization simply uses the charitable cover in order to raise funds for the personal benefit of the organization's employees, be they

paid canvassers or office administrators. The ordinance may exclude organizations like CBE simply because CBE is not a legitimate charitable organization. The ordinance clearly does not exclude large numbers of major charitable organizations.

The respondents seek to argue that the ordinance creates a permanent and irrebuttable presumption that an organization is fraudulent if it devotes more than 25% of its solicitation receipts to non-charitable purposes. The Village is not in the business of making such judgments. It is, however, concerned that those who assume the role of representatives of charitable groups in order to solicit funds from the Village's citizens, do in fact represent organizations that devote a substantial majority of their funds to legitimate charitable purposes. Such identification and authority is well within the guidelines laid down in *Cantwell* and in *Hynes*. An organization such as CBE may well qualify as a "charitable" organization for certain purposes. The fact that it does not apparently so qualify under the Schaumburg ordinance does not render the Schaumburg ordinance invalid, but merely raises questions as to the bonafides of CBE.

The respondents again cite *Schneider* but ignore the fact that the holding in *Schneider* is that the ordinance there gave the police arbitrary power to determine what causes could canvass and solicit door-to-door. The Schaumburg ordinance, whether it be applied to St. Peter's Lutheran Church School, the American Cancer Society, a Schaumburg high school parents' group, or the Heart Association, does not pick and choose between the issues for which canvassing and soliciting can take place.

Again, it must be emphasized that the Village is not restricting the rights of any citizens who want to receive CBE's message and to contribute. Such citizens are, of course, free to invite CBE's representatives to their home, purchase CBE's materials, or participate fully in any purported environmental program sponsored by CBE. The thrust of the Schaumburg ordinance is merely directed at the solicitation of funds in an indiscriminate manner by an organization which devotes more than 25% of the proceeds of its solicitation to other than charitable purposes.

The respondents' argument that a "trespass-after-warning" statute would be proper flies in the fact of the facts of life. It ignores the disturbing factors of the unsolicited knock on the door, the fears of the lone housewife, and the opportunity for fraudulent misrepresentations which are the very evils the ordinance in question is aimed at. The experience of the community well discloses that solicitors whose income depend upon the funds which they raise are not reluctant to ignore the "no solicitors" signs. The realities of the situation are that the average citizen is not likely to pursue the rather laborious process of filing a complaint and appearing in court for violation of a trespass ordinance. The concept that the trespass law or criminal sanctions for fraudulent misrepresentation are adequate remedies to a prevalent nuisance is illusionary.

This court in *Breard* v. *Alexandria,* 341 U. S. 622 at 641 noted an argument that freedom of speech and freedom of the press were impaired by a prohibition against house-to-house canvassing. The court at page 644 said:

> "Subscriptions may be made by anyone interested in receiving the magazines without the annoyances of house-to-house canvassing. We think those communities that have found these methods of sale obnoxious may control them by ordinance. It would be, it seems to us, a misuse of the great guarantees of free speech and free press to use those guarantees to force a community to admit the solicitors of publications to the home premises of its residents. We see no abridgement of the principles of the First Amendment in this ordinance."

The respondents apparently concede that a "Green River ordinance" would be constitutionally valid and not impair freedom of speech or violate the First Amendment. The adoption of a Green River ordinance, of course, is nothing more nor less then the same exercise of the police power which is at issue here. There would appear to be no constitutional difference between an ordinance adopted by a municipality based on a "trespass-after-warning" concept and the kind of regulation here

involved. In each instance, the municipality is using its police powers to restrict what the respondents apparently feel is the exercise of the freedom of speech. The prohibition on canvassing here actually does not substitute the judgment of the community for the judgment of the individual householder. The individual householder is still free to contribute to CBE and to participate in its programs if he so desires.

The thrust of the respondents' argument is really the claim that any group which purports to be charitable in nature has an unrestricted right to solicit funds within any municipality. Such a conclusion flies in the face of this court's recognition in *Hynes* that there is no constitutional right to enter on the private premises of another and knock on a door for any purpose. The fact that there may be statutes against trespass and fraud does not remove from the municipality the right to exercise its legislative discretion in a manner calculated to protect the important municipal interests at stake. The Schaumburg ordinance is clearly drawn with narrow specificity. It is not arbitrary or unreasonable on its face or as applied.

E. Schaumburg's Ordinance Is Supported by Applicable Case Law.

In our original brief we cited substantial authorities in support of the proposition that the ordinance was valid under the municipal police power and did not deprive the respondent of its First Amendment rights. Among those cases were *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 48 L. Ed. 2d 243 (1976); *National Foundation* v. *City of Ft. Worth,* 415 F. 2d 41 (1969) cert. denied, 396 U. S. 1040, 90 S. Ct. 688, 24 L. Ed. 2d 684 (1970); *Tinker* v. *Des Moines Community School District,* 393 U. S. 503, 21 L. Ed. 2d 731 (1969); *Lloyd Corp.* v. *Tanner,* 407 U. S. 551, 33 L. Ed. 2d 131 (1972); *Grayned* v. *City of Rockford,* 408 U. S. 104, 33 L. Ed. 2d 222 (1972); *Rowan* v. *United States Post Office,* 397 U. S. 728, 25 L. Ed. 2d 736 (1970); *Cohen* v. *California,* 403 U. S. 15, 29 L. Ed. 2d 284

(1971); *Lehman* v. *City of Shaker Heights,* 418 U. S. 298, 41 L. Ed. 2d 770; and *Breard* v. *Alexandria,* 341 U. S. 622, 95 L. Ed. 1233 (1951). These cases involved questions of the application of the First Amendment to governmental action of the nature contained in the Schaumburg ordinance here in question.

We also cited extensive authorities in support of the proposition that the ordinance in question was not unconstitutional because of vagueness. They included *Broadrick* v. *Oklahoma,* 413 U. S. 601, 37 L. Ed. 2d 830 (1973); *Grayned* v. *City of Rockford,* 408 U. S. 104, 33 L. Ed. 2d 222 (1972); and *Arnett* v. *Kennedy,* 416 U. S. 134, 40 L. Ed. 2d 15 (1974).

In their reply brief, the respondents content themselves with an attack on the *National Foundation* case and upon a decision of the Illinois Appellate Court which involved the State of Illinois Charitable Act. The other cases, with the exception of *Hynes* and *Breard,* are totally ignored in the respondents' brief.

The respondents seek to distinguish away the *National Foundation* case largely on the ground suggested erroneously by the Court of Appeals in its opinion. The respondents argue that the *National Foundation* case was based upon the fact that the Ft. Worth ordinance did not create a fixed percentage requirement and that the ordinance was flexible. An examination of the opinion, however, indicates that this was not the basis for the court's decision. In the *National Foundation* case, the court cited substantial authority in support of its statement at page 45:

> "No constitutional right exists to make public solicitation of funds for charity. The reasonable regulation of charitable organization is within a government's police power."

The court went on to say:

> "As an incident to the right of a city to regulate the use of its streets by solicitors and as an element of the protection a city may afford its citizens, a city may reasonably require of one who wishes to solicit that he furnish it with a statement of the past and expected receipts and costs of collection of the funds solicitated within its limits and to deny permission to solicit if the cost of collection is excessive."

The court recognized that the burden was on the plaintiff to establish that the ordinance was unreasonable.

The respondents further seek to distinguish the *National Foundation* case because it was decided in 1969 before *Hynes.* The fact of the matter is, of course, that this court denied certiorari in the *National Foundation* case, 396 U. S. 1040, 24 L. Ed. 2d 684. To say that the Fifth Circuit's decision rested on the fact that the Ft. Worth ordinance did not create a fixed percentage requirement is an absolute misreading of the ordinance and the facts in the case. The ordinance provided that a cost in excess of 20% of the amount of collections shall be deemed to be unreasonable.

The respondents' treatment of *People ex rel. Scott* v. *Police Hall of Fame,* 60 Ill. App. 3d 331, likewise overlooks the holding of that case which is critical to the issues in this matter. The statute in that case required the application of 75% of gross receipts toward charitable purposes as therein defined. The respondents seem to find comfort in the fact that the definition of "gross receipts" was different than the criteria set forth in the Schaumburg ordinance. That is not the critical point in the opinion. A specific First Amendment challenge to the provision in the state statute was made in the *Scott* case. Again it was argued that any limitation of that nature violated the First Amendment regardless of the formula used to determine "gross receipts." The court specifically concluded, however, that the fund-raiser's claim of unconstitutionality did not demonstrate an abridgement of the First Amendment. That was the specific holding at 60 Ill. App. 3d 331, 341. The court went on to say that under the statute, the charities were required to apply 75% of gross receipts toward charitable purposes. At 341 the Court said:

> "That statutory formula was devised to secure protection for the donations given charity by the public and we do not

perceive that it unconstitutionally limits the charities and the exercise of First Amendment rights."

The *Scott* case stands for the principle that there is no constitutional prohibition against requiring that a substantial portion of the donations secured will be devoted to charitable purposes. The point is, that regardless of the formula, the state in the exercise of its police power may impose such a restriction with respect to the purposes for which funds may be put. The respondents' basic argument is that under the First Amendment no such restriction can be imposed. The *Scott* case is a clear holding to the contrary. The constitutional aspects of the *Scott* case can only be read to hold that the First Amendment does not prohibit governmental action to require that monies be in fact devoted to the charitable purposes for which they are purportedly sought.

The respondents also cite the cases of *Carolina Action* v. *Pickard*, 420 F. Supp. 310, involving a preliminary injunction and the same case at 465 F. Supp. 576 involving a permanent injunction. An examination of the cases themselves indicate they give no support to the respondents' position here. The ordinance was held to be vague and over-broad because the term "charitable" was not defined in the ordinance. Moreover, the opinion was based upon the authority of the Seventh Circuit's decision in this matter which is now being reviewed by this court. The judgment in 465 F. Supp. 576 came after an extended evidentiary hearing and was not the result of a summary judgment.

The case of *Swearson* v. *Meyers*, 455 F. Supp. 88, again was a case involving a preliminary injunction. The case was brought by the Unification Church and involved a question of freedom of religion. The District Court in that case properly held that the ordinance in question vested unlimited discretion in the city officials without standards and that the ordinance itself was vague. The ordinance simply gave to the issuing authorities the right to consider a number of facts including the nature of the material distributed, the degree of local membership, the financial standing of the organization and whether prior approval had been requested. But these factors did not mandate the issuance of a permit upon the meeting of any specific standards.

We recognize that District Court cases such as the *Carolina Action* case and the *Swearson* case are hardly adequate authority to guide this court, particularly in light of the extensive authority cited in our original brief. But if the court is interested in District Court decisions, we refer it to a decision of the United States District Court for the Southern District of Ohio, Eastern Division in the case of *International Society for Krishna Consciousness* v. *Evans*, 440 F. Supp. 414 (1977). In that case, the District Court, citing decisions of this court, held that charitable solicitation may not only be restricted, but prohibited without impinging on the right of freedom of speech. Moreover, in that situation, the site in question was public, the state fair grounds, and the organization seeking to solicit was a religious group.

It is clear that based upon the authority presented in our original brief, and most particularly the decisions of this court, the Schaumburg ordinance is in all respects a valid exercise of the police power. It is narrowly drawn; it contains precise standards; it does not vest discretion in an administrative officer or a chief of police. It deals with matters of legitimate municipal concern in a reasonable and proper manner. It does not violate the First Amendment.

II.

THE DISTRICT COURT IMPROPERLY GRANTED SUMMARY JUDGMENT.

A. The Ordinance Is Valid on Its Face and Evidence as to the Nature of CBE's Activities Is Required if the Question of Reasonableness as Applied Is To Be Determined.

The plaintiffs herein filed their amended complaint for declaratory judgment and injunction against the Village on December 7, 1977. On the same date, they filed their motion for sum-

mary judgment. (A-2) The trial court gave defendants fifteen days in which to answer. The Village filed its answer to the amended complaint on December 12, 1977 and filed its answer to the motion for summary judgment on December 15, 1977. On December 23, 1977, the plaintiffs filed an affidavit attached to their reply memorandum of law in support of the motion for summary judgment. (A-2)

In its answer to the motion for summary judgment the Village alleged that there are genuine issues as to the material facts and the plaintiffs were not entitled to summary judgment. (A-4) In its oral opinion, the trial court did not deal with the question as to whether there were controverted issues of fact but merely declared subsection (g) of Section 22-20 invalid. (A-46). In the final judgment order the trial court again did not discuss the question of whether there were material issues of fact but simply declared the section in question "unconstitutional and void on its face." (A-53)

The Court of Appeals attempted to place the respondents in a different cagetory from "the more traditional charitable organizations." It refused to hold the ordinance unconstitutional on its face and as applied to the more traditional organizations, but stated that the requirement is on its face unreasonable when applied to an organization which by its nature "allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives and where its paid solicitors necessarily combine solicitations with other primary activities of the organization." In so holding the Court of Appeals necessarily made assumptions as to the character of the respondents which were unsupported by the record.

We suggest that the motion for summary judgment was not within the rules, because Rule 56(a) of the Rules of Civil Procedure prohibits a motion for summary judgment until twenty days after the expiration of the commencement of the action. The filing of an amended complaint on the same day as the motion for summary judgment clearly violates Rule

56(a). But even if that violation of the rules is ignored it is apparent that the state of the pleadings showed that there were genuine issues of material facts.

We deny, of course, that the ordinance is invalid on its face. The Court of Appeals recognized that the ordinance was not invalid on its face and as applied to most charitable organizations. It had to make assumptions dehors the record in order to determine that CBE was a type of organization which in its view rendered the ordinance unreasonable on its face.

The mere fact that the respondents claim to be a certain type of organization does not prove that the ordinance was therefore unconstitutional. The Village in its answer quite properly claimed it had no knowledge sufficient to form a belief as to the truth of allegations regarding the character of the respondents. The Village further alleged as an affirmative defensive the fact that the organization was primarily devoted to raising funds for the benefit and salary of its employees and that its charitable purposes were negligible as compared with the primary objective of raising funds. The Village further alleged on information and belief that more than 60% of the funds collected had been spent for the benefit of employees and not for any charitable purposes.

Thus, contrary to the statements in the respondents' brief, the Village sought a trial on controverted issues as to the character of the organization. Under Point A of the second section of their brief, respondents say that the Court of Appeals squarely affirmed the District Court finding that the 75% requirement is invalid on its face. While we challenge the validity of the Court of Appeals' opinion, it is clear that that opinion did not squarely affirm the District Court. The District Court's opinion made no distinction between groups of charitable organizations and made no findings with respect to information gathering or other nonfund raising activities of respondent. At the very least, the Court of Appeals should have remanded the cause for the purpose of determining whether in fact the organization

devotes a large portion of its efforts to information gathering and the promotion of its objectives.

We believe that the ordinance is constitutional, both on its face and as applied. Once the Court of Appeals conceded that the reasonableness of the 75% requirement depends on the nature of the organization, it was necessary for a trial to determine whether in fact the nature of the respondents' activities was such as to make the 75% requirement unreasonable.

B. The Village's Request for Trial Is Consistent with Its Position Below.

Contrary to the statements in the respondents' brief, there is a substantial dispute as to whether CBE devotes a large portion of its efforts to information gathering and promotion of its objectives and whether its paid solicitors combine solicitation with other primary objectives of the organization. The Village disputed these facts and by affirmative defense alleged that the purpose of the organization was in fact to raise funds for the primary benefit of its solicitors and other employees.

In characterizing the answer to paragraph 3 of the amended complaint, the respondents ignore that portion of the Village's answer stating that they have no knowledge sufficient to form a belief as to the truth of those allegations. To say that the facts were further fleshed out in Hoellwarth's Affidavit is simply to ignore the language of the affidavit.

The Village in its answer did not make the case one of law and not of fact. The reference to relevancy and materiality had to do with the fact that mere registration with the Attorney General and tax exempt status did not determine the issues in the cause. The allegations that the plaintiffs canvassed to solicit funds was admitted. The purpose for which the organization was organized, of course, was immaterial; what the organization actually did was critical. The trial court erroneously held the ordinance unconstitutional on its face. It did not concern

itself with the question of the organization's actual activities and character. Even under the Court of Appeals opinion the nature of the respondent and its activities is vital to resolution of the issues in this cause.

C. The Village Raised Issues of Fact Before the District Court.

In its answer the Village denied that it acted without legal authority or in an arbitrary or capricious manner in denying the plaintiffs' application for permit. (A-28). The question of whether the Village's action was arbitrary or capricious, of course, is a question of fact. The Village denied that its refusal was without good cause shown. (A-29) The Village denied that the plaintiffs were being subjected to a deprivation of freedom of association or rights to access to the courts or denied their constitutional right. (A-30). The Village denied that the plaintiffs' interests were being irreparably harmed or adversely affected by any acts of the defendant. (A-30) The Village denied that there is any prior restraint or unreasonable interference with the exercise of plaintiffs' rights. (A-31) The Village denied that the permits to solicit were issued at the arbitrary discretion of the Village Board. (A-32)

The Village as affirmative defenses alleged on information and belief that the respondents were primarily devoted to raising funds for the benefit and salary of its employees and that its charitable purposes are negligible as compared with the primary objective of raising funds. It further alleged on information and belief that more than 60% of the funds collected had been spent for the benefit of the employees and not for any charitable purposes. (A-33)

Thus, real and substantial material issues of fact were raised in the pleadings before the District Court. These were all genuine issues for trial. Contrary to the assertion of the respondents in their brief, Rule 56(e) does not require that summary judgment be granted under the circumstances at bar. There is no

doubt that the Village raised before the District Court the issues of fact which were contested. Those issues were clearly spelled out in the pleadings. Rule 56(e) provides that a summary judgment must be granted "if appropriate". As we have indicated in our original brief, and here, summary judgment is clearly not appropriate on the state of the record.

1. CBE's Motion Did Not Show That No Genuine Issues of Material Fact Existed.

The motion for summary judgment alleged merely that there was no genuine issue as to any material fact and the plaintiffs were entitled to summary judgment as a matter of law. (A-39) The affidavit of Hoellwarth set forth that he was employed by the respondent and his duties included the direct supervision and control of the canvassing program. The affidavit set forth that CBE was an Illinois not-for-profit corporation and alleged its stated corporate purposes. The affidavit went on to allege that CBE was in good standing with the Charitable Trusts Division of the Office of the Illinois Attorney General, had been granted tax exempt status and tax deductible status by the IRS.

The Hoellwarth affidavit further alleged that the respondent employed a staff of canvassers who were registered with the Attorney General. The affidavit contained the conclusion that CBE is almost entirely supported by small contributions and that door-to-door canvassing was the single most important source of funds for its program. Hoellwarth also stated in his affidavit that in the door-to-door canvass, representatives distributed informative pamphlets and answered questions, accepted complaints and accepted contributions.

That is the sum total of the supposed factual background which gave rise to the motion for summary judgment on December 23, 1978. A second affidavit was attached to the plaintiffs' reply memorandum of law in support of its motion in which Arway made reference to the 1975 and 1976 audits and referred to the fact that CBE had an inhouse research staff. (A-43)

We submit that the state of the pleadings simply did not warrant the granting of a summary judgment involving major constitutional principles.

Directly in point is the case of *Smith* v. *City of Manchester*, 460 F. Supp. 30 (1978) where the Court reviewed the question of granting a motion for summary judgment where major constitutional issues are involved. In the *Smith* case, unlike the case at bar, the parties both agreed that the question at issue was a matter of law. At page 36, the Court said:

> [12] Rule 56(c), Federal Rules of Civil Procedure, permits summary judgment only if there are no material issues of fact and the record shows that the moving party is entitled to judgment as a matter of law. *Lashlee* v. *Sumner*, C. A. 6th (1978), 570 F. 2d 107, 111[6]. Although both sides herein appear to agree that this motion involves merely a matter of law, it is well settled in this circuit that a district court should be extremely hesitant to grant summary judgment on important and complex issues, and the adequacy of the record is particularly important where the Court is called upon to decide questions of constitutional law without the benefit of a trial. *Felix* v. *Young*, C. A. 6th (1976), 536 F. 2d 1126, 1134[13] (likewise involving a challenge to municipal ordinances on First Amendment grounds).
>
> A case heard in the federal courts should be determined upon the merits and after an adequate development of the facts. *Oil Chemical & Atom. Wkrs. Union* v. *Delta Refin. Co.*, C. A. 6th (1960), 277 F. 2d 694, 698[4]. Where a case is such that a full inquiry into the facts at trial is advisable for the purpose of clarifying the application of the law, summary judgment is not appropriate. *S. J. Groves & Sons Company* v. *Ohio Turnpike Commission*, C. A. 6th (1963), 315 F. 2d 235, 238[2]. The federal courts must be reluctant to pass upon the constitutionality of a municipal ordinance without the benefit of a trial. *Rescue Army* v. *Municipal Court* (1947), 331 U. S. 549, 575-576, 67 S. Ct. 1409, 1423, 91 L. Ed. 1666, 1681-1682.

Certainly in the context of the First Amendment issues which the Respondent sought to raise, a summary judgment was not warranted based on the record in this case.

2. The Village Raised the Issues Before the District Court on Which It Now Seeks Trial.

The respondents criticize the answer to the motion for summary judgment filed by the Village because the respondents claim it asserted only legal conclusions and denials. The motion for summary judgment contained nothing but the naked conclusion that there were no material issues of fact. The pleadings themselves raised the issues of the material fact. Both in the denials and in the affirmative defenses the nature of CBE and its lack of genuine charitable purpose was sufficiently and clearly raised. We did not wait for appeal to raise the issues. The respondents now chide us for relying on newspaper articles in support of our affirmative defenses. This comes with somewhat poor grace from a party that is impressed by articles published in the "Philanthropy Monthly" and discusses drafts of accounting principles which were not in any manner before the Court. We suggest that Rule 7(a) does in fact permit a reply to the kind of affirmative defenses which were raised in our pleadings. Failure to respond to those affirmative defenses was at respondents' peril.

The respondents further are critical because "the Village used none of the extensive discovery tools available" to develop a factual record to oppose CBE's motion. Here again, that assertion is somewhat hollow in light of the fact that the respondents filed their motion for summary judgment on the same day they filed their amended complaint and the Village was given fifteen days in which to answer. The fact is simply that the Village opposed the summary judgment in a manner totally proper under the circumstances. Its answer raised controverted material issues of fact which could be resolved only by a full trial.

CONCLUSION.

For the reasons set forth herein and in our original brief, we respectfully suggest that the trial court erred in granting the motion for summary judgment and the Court of Appeals erred in affirming that decision. The Schaumburg ordinance both on its face and as applied to CBE is a reasonable exercise of the police power. It does not violate the First Amendment or in any way infringe the constitutional rights of respondents.

We, therefore, respectfully suggest that this Court reverse the Court of Appeals and that Section 20(g) of Chapter 22 of the Schaumburg Code be held to be constitutional on its face and as applied, or in the alternative, that this Court reverse the Court of Appeals, hold the ordinance valid on its face and remand the matter for trial on the question of reasonableness as applied to the respondent.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioner.

APPENDIX.

CERTAIN ORGANIZATIONS SOLICITING PURSUANT TO SCHAUMBURG ORDINANCE.

	Date of Original Approval
City of Hope	June, 1974
St. Jude's Hospital	June, 1974
Salvation Army	February, 1975
The Heart Association	January, 1975
American Cancer Society	April, 1974
Juvenile Diabetes	April, 1974
March of Dimes	January, 1975
United Cerebral Palsy	January, 1975
Kidney Foundation of Illinois	February, 1975
Muscular Dystrophy	February, 1975
Cystic Fibrosis	August, 1975
Children's Benefit League	December, 1975
Mental Health Association	April, 1976
American Diabetes Association	September, 1977

MOTION FILED
JUL 23 1979

No. 78-1335

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

VILLAGE OF SCHAUMBURG, *et al.*,
Petitioners,

v.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

J. ALBERT WOLL
ROBERT C. MAYER
815 15th Street, N.W.
Washington, D.C. 20005

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006

Attorneys for AFL-CIO

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On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby moves for leave to file a brief amicus curiae in the above noted case in support of the position of the respondents. The respondents have consented to the filing of said brief; the petitioners have refused to do so.

INTEREST OF THE AFL-CIO

The AFL-CIO is a federation of 104 national and international unions having a total membership of approximately 13,750,000 working men and women. This case concerns the extent of state and local authority to regulate door-to-door methods of communication. As the Court noted in *Martin* v. *Struthers,* 319 U.S. 141, 146 "laboring groups

have used * * * this method of disseminating their doctrine * * * in recruiting their members." See also *Staub* v. *City of Baxley*, 355 U.S. 313. The question presented here is therefore of considerable moment to the AFL-CIO.

THE ISSUES TO BE COVERED IN THE AFL-CIO'S BRIEF

The brief which is sought to be filed will demonstrate that the challenged provision of petitioners' ordinance violates the First Amendment because the ordinance adversely affects the exercise of First Amendment rights, and because it cannot be justified on either of the theories advanced to support it. The provision does not serve any privacy interest of the residents of Schaumburg, because other provisions, not challenged herein, authorize each resident to post his premises against solicitation; nor can it be sustained as a regulation against fraudulent solicitations, because it classifies as expenses for non-charitable purposes items which do, in fact, advance the charitable purposes for which respondents and many other *bona fide* charitable organizations solicit funds.

CONCLUSION

For the above stated reasons this motion should be granted.

Respectfully submitted,
J. ALBERT WOLL
ROBERT C. MAYER
815 15th Street, N.W.
Washington, D.C. 20005
LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006
Attorneys for AFL-CIO

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On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

ARGUMENT

(1). The District Court observed that respondent Citizens for a Better Environment ("CBE") "is an information-gathering and information-dissemination [group] * * * akin to a political action group using political action in its broadest sense." (A. 45-46.) CBE in futherance of its program engages in "door-to-door canvass[ing]" during which the undisputed evidence shows that:

> representatives distribute informative pamphlets on

> environmental subjects and on CBE activities, answer questions posed by residents, accept pollution complaints on a form provided for follow-up investigation and possible action by CBE, accept signatures to a statement of citizen's support to CBE's program, upon which thousands upon thousands of signatures have been collected, and accept contributions from such residents. [A. 41.][1]

At issue here is the constitutional validity of Schaumburg's scheme for licensing these activities of CBE.

(2). The First Amendment provides a large measure of protection to individuals and groups who spread a religious, political or social message door to door. This Court in *Martin* v. *Struthers*, 319 U.S. 141, 145-146, noted:

> The widespread use of [the door to door] method of communication by many groups espousing various causes attests its major importance. * * * Many of our most widely established religious organizations have used this method of disseminating their doctrines, and laboring groups have used it in recruiting their members. * * * Of course, as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the citizens in their homes. Door to door distribution of circulars is essential to the poorly financed causes of little people. [Footnotes omitted.]

[1] While petitioners assert that "there were controverted allegations as to the character of" CBE (Pet. Br. 34), they failed to controvert those allegations in the manner provided by Rule 56(e) of the Federal Rules of Civil Procedure. Accordingly, the District Court properly accepted as the facts those stated in the affidavits which CBE submitted in support of its motion for summary judgment (quoted in part above).

Accordingly:

> Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas. [*Id.* at 146-147.]

This statement of the central lesson of the law, and the course of decision from *Lovell* v. *Griffin*, 303 U.S. 444 through *Hynes* v. *Mayor of Oradell*, 425 U.S. 610, shows that there is "no absolute right under the Federal Constitution to * * * knock on a door for any purpose" (*id.* at 619). Laws placing limits on that right "*may* serve the[] important interests * * * [of] protecting citizens from crime and undue annoyance * * * without running afoul of the First Amendment." (*Id.* at 616-617; emphasis supplied.) But the recognition that regulation in this area "may" do so, does not mean that it invariably succeeds:

> "Adjustment of the inevitable conflict between free speech and other interests is a problem as persistent as it is perplexing," *Niemotko* v. *Maryland*, 340 U.S. 268, 275 (1951) (Frankfurter, J., concurring in result), and this Court has in several cases reviewed attempts by municipalities to regulate activities like canvassing and soliciting. Regulation in this area "must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly," *Thomas* v. *Collins*, 323 U.S. 516, 540-541 (1945.) [*Hynes*, 425 U.S. at 616.]

Recognizing the sensitivity of the problem, the Court has examined each regulatory scheme on its own terms. *Hynes* exemplifies this circumspect approach. The Court measured the ordinance there against the basic "test that in the First Amendment area 'government may regulate . . . only with narrow specificity' " (*id.* at 620), and concluded "that the ordinance is invalid because of vagueness" (*id.*). That being so the Court declined to reach "the other [more far-reaching] arguments appellants advance." (*Id.*) Here too, as we now show, the ordinance is so plainly constitutionally deficient "as to make it quite needless in this case to examine the periphery" (cf., *Kingsley Pictures Corp.* v. *Regents*, 360 U.S. 684, 689).

(3). Petitioners "emphasize[] at the outset that although Section 20(g) of Chapter 22 is the only provision of the Schaumburg ordinance at issue here, that section is but a part of a comprehensive method of regulating both commercial and charitable peddlers and solicitors". (Pet. Br. 12.) Although we are uncertain what lesson, if any, petitioners would draw from this circumstance, we agree that the challenged provision should not be viewed in isolation. Indeed, the conclusion reached by the Court of Appeals that Sec. 20(g) violates the First Amendment on its face is strongly reinforced when that provision is read in the light of Schaumburgs entire regulatory scheme. As petitioners state:

> The Village Code in Article II, Section 22-6 through 22-18 regulate the activities of for-profit peddlers and solicitors. Charitable solicitations are regulated by Article III, Sections 22-19 through 22-24. [Pet. Br. 12-13.]

We set out the essence of each Article in turn.

Article II—"Peddlers and Solicitors". Since petitioners fail to describe their regulation of the activities of "for profit" peddlers and solicitors (Article II), we must look elsewhere. That Article is set forth in full at pages A20-A25 of Respondents' Brief in Opposition.

Article II provides that "no person shall engage in the business of a peddler or solicitor within the village without first having obtained a license therefor as provided in this article".[2] (Sec. 22-7) A license can be obtained only on application to the village collector. The application calls for information regarding the identity of the applicant and his employer, "the kind of merchandise to be peddled or offered", "cities of previous solicitation", and, "whether such applicant has ever had a revocation of any peddler's or solicitor's licenses, whether he has ever been convicted for a violation of similar peddlers and solicitors ordinances, whether he has ever been arrested or convicted of a misdemeanor or felony, and if so, why". (Sec. 22-8) Upon request from the village collector the Chief of Police is directed to "make or cause to be made an investigation to determine the character and reputation of the applicant." (Sec. 22-9) It is expressly provided that "no license shall be issued to any applicant who is not found to be a person of good character and reputation or to any firm, corporation, partnership or association which is not represented in the village

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[2] "Peddler" is defined as "any person who, going from place to place, shall at retail sell, offer for sale, sell and deliver, barter or exchange any * * * article or thing whatsoever or any service from a vehicle or otherwise"; "Solicitor" is defined as "any person who, going from place to place, without prior appointment or prearrangement with the customer, shall take orders for future delivery at retail of any merchandise or other article or thing, or any service." (Sec. 22-6)

by a person found to be of good character and reputation". (*Id.*) The Chief of Police must certify to the village collector within 30 days of the application whether a permit shall be issued or denied. (*Id.*) A $10 annual fee is required for a peddler's or solicitor's license. (Sec. 22-10)[3]

It is declared to be "unlawful for any peddler or solicitor to cheat, deceive or fraudently misrepresent * * * while acting as a peddler or solicitor in the village or to barter, sell or peddle any goods, merchandise or wares other than those specified in his application for a license." (Sec. 22-12). Soliciting and peddling is forbidden before 9 a.m. or after 6 p.m. and on Sundays, except for vending of food from trucks on the public ways which is allowed "on all days between sun-up and sunset". (Sec. 22-15)

Occupants of dwelling units are instructed that they may post their dwelling units against solicitors and peddlers by a sign stating "NO SOLICITORS OR PEDDLERS INVITED." (Sec. 22-15). Solicitors and peddlers are directed "upon going onto any premises in the village upon which a residence as herein defined is located" to examine whether such a notice is attached, and if so, to "immediately and peacefully depart from the premises" (Sec. 22-16.) Solicitors and peddlers are also required to immediately and peacefully depart from any premises to which they have gained entrance when requested to do so by the occupant. (*Id.*)

Article III—"Charitable Organizations". Article III provides that "every charitable organization, which solicits

[3] The fee is $25 per vehicle if the peddler or solicitor uses a vehicle other than a private automobile. (*Id.*) The application must list the number of vehicles if any to be operated. (Sec. 22-8)

or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit". (Sec. 22-20) "Charitable organization" is defined as "any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes." (Sec. 22-19)

The application must identify the organization, the person in charge of solicitation and all persons who will solicit contributions in the village. It must set forth the dates, times and area where solicitation shall be conducted. (Sec. 22-20(a)-(d)) It requires also a "written statement of recent date by the Attorney General of Illinois that the organization has complied with" the Illinois charitable solicitation statute (Sec. 22-20(e)), and proof that the organization is tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. (Sec. 22-20(f)) Lastly, the application must contain "satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization" as "charitable purposes" is defined in the ordinance. A certified audit of the organization's last full year of operations or "other comparable evidence" must be submitted to "demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization." (Sec. 22-20(g)).

Applications are to be submitted to the village clerk who in turn shall submit them to the village board. If the village board finds and determines that all the requirements of Article III have been met "a permit shall be issued specifying the dates and times to which solicitation may take

place". (Sec. 22-21) Each application must be accompanied by a $10 fee. (Sec. 22-22) Persons who have been convicted of or who are under indictment for a felony may not be utilized as solicitors. (Sec. 22-23).

Permits shall not permit solicitation before 9 a.m. and after 6 p.m. or on Sunday. A solicitor is not permitted "to go upon any premises which has posted a sign indicating 'no solicitors or peddlers invited.'" (Sec. 22-24)

In describing Schaumburg's "comprehensive method" of regulation (Pet. Br. 15) petitioners fail to specify the consequences to a charitable organization if it is disqualified under Sec. 22-20(g) and/or the other requirements of Sec. 22-20. If Articles II and III are mutually exclusive, then Article III imposes a flat prohibition on "charitable organizations" which are unable to conform to those standards. But the court below observed that "the Village alleges that CBE, at least, can apply for a permit under the for-profit provisions" (Pet. A9, n. 6).[4] If so, then CBE, and any other charitable organization which fails to qualify under Sec. 22-20(g)—or under Sec. 22-20(e) or (f)—may apply under Article II. But availability of this potential avenue does not change the constitutional status of Sec. 22-20(g) because on that interpretation the effect of noncompliance is

[4] As that court also noted (*id.*) that interpretation is not readily reconciled with the language of Secs. 22-6 and 22-19 which respectively define coverage under Articles II and III. Although petitioners vigorously assert that "the ordinance in question is not unconstitutional because of vagueness" (Pet. Br. 24, heading) and accuse the Court of Appeals of "stretch[ing] to find some situations which may or may not arguably be covered by the ordinance" (*id.* 27), they do not address this question of interpretation in their brief to this Court.

to subject the organization to the Police Chief's discretionary determination regarding its solicitors' "good character and reputation" (Sec. 22-9). A scheme which licenses the exercise of First Amendment rights on such a discretionary judgment is plainly unconstitutional under *Schneider* v. *State*, 308 U.S. 147, 158; *Cantwell* v. *Connecticut*, 310 U.S. 296, 305-307; and *Hynes*, 425 U.S. at 617-618, 624.

On either view of the matter Sec. 22-20(g) constitutes a substantial interference with the exercise of First Amendment rights of organizations such as CBE. Thus the provision may survive constitutional scrutiny only if petitioners can establish "a subordinating interest which is compelling" (*Bates* v. *Little Rock*, 361 U.S. 516, 524). In attempting to sustain that burden, petitioners' argument interweaves reliance on two entirely distinct interests—the privacy of village residents, and protecting residents from fraud. We now show that petitioners have failed to justify this ordinance under either theory.

(4)(A). When Schaumburg's regulatory scheme is viewed in its totality, it becomes clear that Sec. 22-20(g) serves *no* privacy interest. The entire scheme permits a wide range of enterprises and organizations to raise money door to door where the resident has not posted the premises against such solicitation. There is no rational basis for believing that solicitors for charitable organizations which spend more than 25% of contributions for purposes other than those specified in Sec. 22-20(g) create a greater danger to the *privacy* of residents than do solicitors for charitable organizations which qualify under that provision, let alone brush salesmen, vendors of appliances, insurance salesmen and countless others who may obtain permits under Article II. Thus, the elimination of that subclass of potential solicitors

can be said to protect the privacy of homes only if *any* reduction of potential solicitors by some unknown number and proportion can be said to protect that interest. But that incidental effect—which would be served equally be eliminating all solicitors whose surname begins with the letter "A"—is altogether too attenuated to explain the purpose of Sec. 22-20(g), let alone pass muster under the First Amendment.

The provisions of Articles II and III which actually safeguard the "right of individuals to be left alone in the peaceful enjoyment of their homes" (Pet. Br. 19), are those which forbid solicitation on any premises where a sign is posted "no solicitors or peddlers invited." (Sec. 22-16[5]; Sec. 22-24. See also Sec. 22-15 prescribing a form of notice.) Schaumburg thereby protects privacy interests in precisely the manner contemplated by *Martin* v. *Struthers, supra,* 319 U.S. at 147-149. *Rowan* v. *Post Office Dept.,* 397 U.S. 728, 737, relied on at Pet. Br. 19, followed *Martin* on this very point. The Court there sustained an Act of Congress "under which a person may require that a mailer remove his name from its mailing lists and stop all future mailings to the householder" by establishing "a procedure whereby any householder may insulate himself from advertisements that offer for sale 'matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative.' " (397 U.S. at 729-730, quoting 39 U.S.C. § 4009 (a) (1964 ed., Supp. IV).)

[5] The balance of Sec. 22-16, which requires solicitors or peddlers to leave immediately when requested to do so has no counterpart in Article III, but such a requirement may be implicit in Sec. 22-24 and we have no doubt that the village could constitutionally impose it on any and all solicitors.

Sec. 4009(a) thus placed the protection of an individual's privacy just where it belongs, with that individual; even in regulating the mailing of such materials it did not impose a complete ban, which would have prevented willing recipients from receiving them. By safeguarding individual choice in this manner Congress accepted some cost to privacy interests because unwilling persons could not avoid receiving an initial mailing of offensive materials from a particular mailer; Secs. 22-16 and 22-24 are comparatively more efficient in protecting privacy because they enable residents to protect themselves against any and all solicitation. Given these provisions, it is sheer hyperbole for petitioners to argue that Sec. 22-20(g) operates to prevent "the invasion of a private home uninvited and at inappropriate hours" (Pet. Br. 22) or, for "the protection of the home owners from uninvited solicitors" (Pet. Br. 27). Since this is apparently not its purpose and is certainly not its effect, decision of this case requires no balancing of First Amendment and privacy interests.

(B). Petitioners, also assert that Sec. 22-20(g) is designed to protect residents of the village from fraud. That was the purpose of the ordinance which was sustained in *National Foundation* v. *Fort Worth,* 415 F.2d 41 (C.A. 5), cert. denied, 396 U.S. 1040 on which petitioners rely so heavily.[6] As petitioners note, the court in *National Foundation* quoted with approval the following passage from *Cantwell* v. *Connecticut,* 310 U.S. 296:

Without doubt a state may protect its citizens from

[6] The City of Fort Worth made no pretense in defending its ordinance that it was designed to serve any other purpose, such as privacy.

> fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. [310 U.S. at 306-307, quoted at 415 F.2d 46.]

We unhesitatingly accept this proposition. But to acknowledge the clear authority of state and local government to prevent frauds is only one step, as *Cantwell* demonstrates by example, in determining whether a particular law claimed to address that wrong is valid under the First Amendment. This Court has said:

> Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. [*New York Times* v. *Sullivan*, 376 U.S. 254, 269, footnotes omitted.]

Nor can "fraud" claim such "talismanic immunity." The *Cantwell* Court *struck down* a Connecticut statute which prohibited solicitation of "money, services, subscriptions or any valuable thing for any alleged religious, charitable, or philanthropic cause * * * without the approval of the Secretary of the Public Welfare Council" (310 U.S. at 301-302), on the ground that "as applied to prevent Jehovah's Witnesses from soliciting door to door", the statute "infringed upon the right to free exercise of religion, guaranteed by the First and Fourteenth Amendments" (*Hynes*, 425 U.S. at 617). As the Court of Appeals said here:

> The Village has a legitimate interest in protecting its citizens from fraud by solicitors who will use the funds collected for purposes other than those expressly or impliedly represented. It has a similar protection interest in identifying organizations where the salaries paid are so large in relation to the services provided that the organization is actually a for-profit venture. The 75 percent requirement *might* be valid where solicitors represent themselves as mere conduits for contributions. But the requirement as it exists in the Village code also applies where it is made clear that the contributions will be used for reasonable salaries of those who will gather and disseminate information relevant to the organization's purpose. Thus the standard is not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The freedom of expression of organizations which do not present these problems is also infringed, either by absolute prohibition or the additional burden of the for-profit permit requirements. [Pet. A10-A11; emphasis is original.]

We cannot improve on this statement. But it does bear emphasis that Sec. 22-20(g) sets a totally arbitrary and unjustified standard for distinguishing "between solicitation for genuinely charitable purposes and those who would use the cloak of charity to mask their pursuit of commercial gain." (Pet. Br. 29.) Petitioner argues:

> When, as is apparently the case here, a majority of the funds are utilized not for the charitable purposes for which the organization was purportedly organized, but instead to compensate canvassers, officers, and employees, it must be concluded that what is involved is nothing more nor less than a commercial enterprise even

> though it be dressed in the trappings of a charitable or environmental purpose. [*Id.*] [7]

But the antithesis thus drawn is false: salaries and other "administrative expenses" as defined in Sec. 22-20(g) are not incompatible with "the charitable purposes for which the organization was purportedly organized", but may be essential for accomplishing those purposes. This will be true of any organization which performs through its own officers, employees and staff the cha ble or other non-profit functions for which it is organized and for which it solicits funds, be they research, lobbying, raising citizen awareness of public affairs, educating students, etc. A community college, for example, would fail to qualify under Sec. 22-20(g) because the money it raised would largely go for the payment of faculty salaries, rent, telephone, and the like. Sec. 22-20(g) is a totally inadequate method for distinguishing between fraudulent and non-fraudulent organizations which solicit funds for charitable purposes because it is totally unrelated to the true nature of the actual operations of such organizations. In the very case on which petitioners have so heavily relied, the Fifth Circuit recognized that

> A fixed percentage limitation on the costs of solicitation might be undesireable and inapplicable if applied to all types of charitable organizations. [*National Foundation, supra,* 415 F.2d at 46.]

So, too, in holding that a similar 25% "cost-of-solicitation

[7] We note that although petitioners here refer to a "majority of the funds" although the ordinance disqualifies organizations which spend more than 25% of their funds for salaries and administrative purposes.

rule" was "overly broad" the District Court in *Carolina Action* v. *Pickard,* 465 F.Supp. 576 (W.D.N.C.) observed that:

> It stultifies protected speech, as it makes the ability to engage in neighborhood canvassing-solicitation dependent on a showing that plaintiff's representatives and ideas will be sufficiently popular to obtain at least $3 in contributions above every $1 expended in the canvass. Such a requirement is likely to operate most seriously to the detriment of those organizations espousing unusual or unpopular views and therefore most urgently in need of protection from encroachments on their First Amendment rights. It is the unpopular or unusual organizations whose survival may depend on being able to conduct the type of integrated campaign utilized by plaintiff. The imposition of a 25% cost-of-solicitation limitation, without providing relief for organizations that can demonstrate their bona fides and good reason for being relieved of the percentage limitation, ultimately and unlawfully serves, as it might have here, to make the right to engage in neighborhood canvassing depend on the content of the canvassers' message rather than on the legitimate interest of the community in the character of the canvassers. See *Hynes, supra* at 617, *accord, Citizens for a Better Environment* v. *Schaumburg,* 590 F.2d 220 (7th Cir. 1978). [465 F.Supp. at 581.]

That court also ruled:

> Defendants' refusal to attribute any of plaintiff's canvassers' salaries to non-solicitation functions on the ground that plaintiff's solicitation, organizational, and informational activities occur at the same time, is not compelled by § 2-30 in the face of undisputed evidence that these activities are combined because of plaintiff's precarious financial position. Under defendants' inter-

> pretation of the language of § 2-30, the "cost of raising the funds" grows in direct proportion to the need of the applicant to integrate its public contact activities; the more efficient it attempts to be, the more likely it will be denied a permit under the presumed authority of § 2-30. [Id. at 581-582.]

Indeed, any organization which combines the spreading of its message with solicitation of membership or contributions will inevitably run afoul of Sec. 22-20(g) because, as is true of the plaintiffs herein and in *Carolina Action*, the "informational and solicitation aspects of the[ir] house-to-house canvass * * * are interdependent" (*Carolina Action*, 465 F.Supp. at 579). (Compare *Cantwell*, 310 U.S. at 301; *Murdock* v. *Pennsylvania*, 319 U.S. 104, 106-107; *Thomas* v. *Collins*, 323 U.S. 516, 533-537.)

Schaumburg's lack of care in formulating the standards for distinguishing between "charitable organizations" which may be licensed as such, and those which may not, is further evidenced by the requirement of Sec. 22-20(f) that applying organizations must be proven to be tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Thus, under petitioners' "fraud" theory, all organizations which fall under Sec. 501(c)(4) or (5) of the Code are treated as if they constitute "a commercial or even fraudulent enterprise" (Pet. Br. 30). It is also instructive that while Sec. 501(c)(3) provides tax exemption for entities which are "organized and operated exclusively for religious, charitable, scientific * * * or educational purposes * * *", neither Congress nor the Internal Revenue Service deems the payment of salaries to solicitors or other employees as establishing that the entity is not being operated "exclusively"

for its avowed purpose.[8] Since Congress and the Internal Revenue Service have a substantial stake in preventing organizations from obtaining tax exemption unless they are legitimately not organized for profit, it is difficult to see why the village does not deem it adequate protection of its residents from fraud to require that organizations which solicit funds be qualified as exempt under the Internal Revenue Code.

The short of the matter is that although Sec. 22-20(g) provides that certain expenditures "shall not be deemed to be used for the charitable purposes of the organization", such expenditures are in fact used for such purposes by many types of charitable organizations, as this record illustrates. Although the Court of Appeals' decision turned on this point, petitioners have failed to make any showing that Sec. 22-20(g) accurately differentiates between organizations which do use 75% of their proceeds "directly for the charitable purpose of the organization" and those which do not.

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[8] Indeed, although Sec. 501(c)(3) also requires that "no part of the net earnings of [such entity] inures to the benefit of any private shareholder or individual", the Internal Revenue Service has ruled with respect to a school which claim exemption thereunder that the payment of "reasonable compensation for their services" to the former owners of the school (which had been operated for profit) is consistent with Sec. 501(c)(3). [Rev. Rul. 76-441, 2 C.B. 147 (1976-2).]

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals should be affirmed.

J. ALBERT WOLL
ROBERT C. MAYER
815 15th Street, N.W.
Washington, D.C. 20005

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006

Attorneys for AFL-CIO

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VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae.

BARRY A. FISHER
LARRY J. ROBERTS
DAVID GROSZ
ROBERT C. MOEST
SUSAN L. CARROLL

Two Century Plaza,
2049 Century Park East, Suite 3160,
Los Angeles, Calif. 90067,
(213) 557-1077,

Attorneys for Holy Spirit Association for the Unification of World Christianity.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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IN THE

Supreme Court of the United States

October Term, 1979
No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

The Holy Spirit Association for the Unification of World Christianity (hereinafter, "Unification Church" or "Church"), hereby respectfully moves, pursuant to Rule 42(3) of this Court, for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for the respondent has been obtained. The consent of the attorney for the petitioner was requested but refused. The motion is based on the following grounds.

1. Interest of the Unification Church.

The Unification Church is a California non-profit, religious corporation, holding, *inter alia*, federal, California, and Illinois tax exemptions. The Unification

Church was founded in 1954 and is now established in hundreds of cities throughout the United States and the world. The Church teaches fundamental religious beliefs, and emphasizes prayer, evangelical missionary engagements, religious rallies, workshops, retreats, and lectures. An important part of the Church's activities in furtherance of its beliefs consists of public-place and door-to-door proselytizing of its tenets and principles and the distribution of religious literature, frequently accompanied by the solicitation of funds from the public for support of the Church.

In the latter connection, the Church and its members deal on a continuing basis with state and local ordinances regulating public solicitations of funds, such as the ordinance of the Village of Schaumburg at issue here. On numerous occasions, the Church or its members have been obliged to engage in litigation concerning the validity of these ordinances,* and they expect that such litigation will similarly be necessary in the future. In consequence, the Church has a continuing interest in the development of the law in this area,

*Recent cases in which the Unification Church or its members have challenged the validity of local solicitation ordinances include, *e.g.*, *Holy Spirit Association for the Unification of World Christianity v. Alley*, 460 F.Supp. 346 (N.D. Tex. 1978); *Cherris v. Amundson*, 460 F.Supp. 326 (E.D. La. 1978); *Hall v. McNamara*, 456 F.Supp. 245 (N.D. Cal. 1978); *Swearson v. Meyers*, 455 F.Supp. 88 (D. Kan. 1978); *Love v. Mayor of Cheyenne*, 448 F.Supp. 128 (D. Wyo. 1978); *Levers v. City of Tullahoma*, 446 F.Supp. 844 (E.D. Tenn. 1978); *Evans v. Fullard*, 444 F.Supp. 1334 (W.D. Pa. 1978). *See also, e.g., Heritage Village Church and Missionary Fellowship, Inc. v. North Carolina*, 253 S.E.2d 473 (N.C. Ct. App. 1979) (Unification Church an intervenor in action challenging state statute).

an interest which is especially acute where a case before this Court may very well have an impact on pending and future actions in which the Church or its members are involved.

More particularly, the interest of the Unification Church in this case arises from the fact that it and its members are plaintiffs in a case presently pending in the United States District Court for the Northern District of Illinois which challenges the validity of precisely the same ordinance which is at issue in this case. *Hartman v. Village of Schaumburg*, No. 78C 4427 (N.D. Ill., filed November 8, 1978). Accordingly, the decision of the Court in the present case will necessarily have a significant impact on the pending *Hartman* litigation.

2. Questions of Law Not Presented by the Parties.

The ordinance at issue in the instant case, Schaumburg, Ill., Code §22-19, *et seq.* (1974), constitutes an attempt by petitioner Village to regulate solicitations for charitable purposes in a rather comprehensive manner. In particular, the ordinance, *id.* at §22-20, requires that "[e]very charitable organization, which solicits or intends to solicit contributions from persons in the village . . . shall prior to such solicitation apply for a permit." It then sets forth seven items of "information" which must be supplied to the village clerk before any such permit may issue. The ordinance contains a number of other specific restrictions on solicitation. *Id.* at §§22-22, 22-23, 22-24.

In the instant case, however, the parties have focused their entire attention on only one sub-part of the ordinance, §22-20(g), and have treated it in isolation from the permit application process as a whole. Under the circumstances, this manner of presentation of the issue does not clearly and completely bring the question of the validity of the ordinance before the Court.

Since it is likely that the parties will pursue the same course in this Court, the brief which the Unification Church seeks leave to file as *amicus curiae* will contain a more complete argument as to the ordinance as a whole, placing the sole challenged provision in its proper context. Further, the brief will argue that settled principles compel the conclusion that the ordinance is constitutionally defective on numerous grounds even apart from §22-20(g) viewed as a single specific restriction on the exercise of first amendment rights. These issues have not been and, the church believes, will not be, addressed by the parties. If these arguments are accepted, they would be dispositive of the case.

Moreover, the language of the ordinance does not preclude its application to purely religious solicitation, and the pending *Hartman* litigation affirmatively demonstrates that petitioner has construed the ordinance to apply to such solicitation. The Unification Church, as a religious organization, is in a position to view the ordinance in this context, and has done so in its brief. The Church believes that this is a useful perspective for the case, but does not anticipate that respondent, a political group concerned specifically

with environmental action, will address many of the issues thus raised.

Accordingly, and for the foregoing reasons, the motion of the Unification Church for leave to file a brief *amicus curiae* should be granted.

Dated: July 21, 1979.

Respectfully submitted,

BARRY A. FISHER
LARRY J. ROBERTS
DAVID GROSZ
ROBERT C. MOEST
SUSAN L. CARROLL

Attorneys for the Holy Spirit Association for the Unification of World Christianity.

BRIEF AMICUS CURIAE.

INTEREST OF AMICUS CURIAE.

The interest of *amicus curiae* is set out in the Motion for Leave to File Brief Amicus Curiae, *supra*.

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED.

This case involves the first and fourteenth amendments to the Constitution of the United States, and Schaumburg, Ill., Code, ch. 22, art. III (§22-19 *et seq.*) (1974). The relevant provisions are set forth in Appendix A hereto.

QUESTIONS PRESENTED.

Whether Schaumburg, Ill., Code, ch. 22, art. III (§22-19 *et seq.*) (1974) relating to charitable solicitations is facially unconstitutional under the first and fourteenth amendments to the United States Constitution where the ordinance:

1. Is vague in its coverage, and may be read to include solicitations by political and religious organizations; and

2. Requires a permit to engage in first amendment protected activity, but, through the use of vague terms in the permit application procedure, effectively vests unbridled discretionary authority in the licensor to grant or deny such a permit; and

3. Makes no provision whatever for first amendment due process procedural safeguards mandated by *Freedman v. Maryland*, 380 U.S. 51 (1965), and its progeny; and

4. Contains, with no compelling interest in support thereof, several specific restrictions on the exercise of first amendment-protected activities, including

a. A curfew prohibiting solicitation on Sundays and on any other day before 9:00 A.M. and after 6:00 P.M.;

b. A prohibition on solicitation by any person indicted for or convicted of a felony; and

c. An exaction of a flat permit fee; and

d. A requirement of a statement of statutory compliance not available to religious organizations; and

5. Prohibits solicitation by any charitable organization, including those religious or political, which does not meet an arbitrary standard of efficiency in fundraising, measured by a 25% limitation on the "costs" of solicitation.

SUMMARY OF THE ARGUMENT.

The principle that the first amendment protects fund solicitations to support religious activities was established forty years ago in *Schneider v. New Jersey*, 308 U.S. 147 (1939), and this Court has consistently treated religious solicitation as speech entitled to the highest degree of constitutional protection. Accordingly, Schaumburg's vaguely-worded charitable solicitation ordinance, which may be, and apparently is, applied to both religious and charitable solicitation, which subjects such solicitation to a self-proclaimed standard of efficiency embodied in the percentage limitation, constitutes an unjustifiable and unconstitutional burden on protected speech. Further, with respect to religious solicitations, to direct the allocation of church resources may well violate, in addition, the command of the

religion clause which prohibits state entanglement in church affairs and restrictions upon free exercise of religion.

Apart from the percentage limitation, the Schaumburg ordinance as a whole is constitutionally defective on its face on independent grounds. First, the ordinance is facially unconstitutional in that it vests discretion in the licensing authority to grant or to deny licenses for the exercise of first amendment rights but totally fails to provide the narrow and objective standards which are required to confine the imposition of prior restraints on protected speech. The resulting problem of unbridled discretion is made worse by the inclusion of vague terms which, not only fail to inform those subject to the ordinance of the conduct required of them, but also invite those administering the ordinance to apply it subjectively and in a potentially lawless manner.

Second, the ordinance is facially unconstitutional in that it makes no attempt to provide the procedural due process safeguards mandated by *Freedman v. Maryland*, 380 U.S. 51 (1965). Such safeguards are required of any statutory scheme which, like the Schaumburg ordinance, requires a permit or other official authorization as a condition to engaging in first amendment expression.

Finally, several other specific features of the ordinance, for example, the restriction on solicitations by those convicted of or indicted for a felony, the exaction of a flat licensing fee, the requirement of a statement of statutory compliance not available to religious organizations, and the imposition of a curfew which partially closes the streets and parks of the village

to first amendment expression, constitute overt restrictions on the exercise of first amendment rights. There being no compelling state interest sufficient to justify such effective censorship of protected speech, the Schaumburg ordinance is in this respect, too, constitutionally defective.

ARGUMENT.

I.
INTRODUCTION.

This case is a challenge by respondent Citizens for a Better Environment, an organization whose stated purpose is the protection and improvement of the Illinois environment, to a provision of an ordinance of petitioner Village of Schaumburg, Schaumburg, Ill., Code, ch. 22, art. III (§§22-19 *et seq.*) (1974) (the "Charitable Solicitation Ordinance") on the grounds that the provision is constitutionally invalid under the first and fourteenth amendments to the United States Constitution. The District Court granted respondent's motion for summary judgment in an unreported decision, holding the challenged provision unconstitutional. The Court of Appeals affirmed the judgment of the District Court. *Citizens for a Better Environment v. Village of Schaumburg*, 590 F.2d 220 (7th Cir. 1978).

Since the action as filed and decided referred only to a single isolated provision of the entire ordinance, and since the ordinance as a whole is under settled principles unconstitutional on its face, the purpose of the instant brief is to present to the Court arguments which place the sole challenged provision in its appropriate legal context.

The ordinance requires in §22-20 that any "charitable organization", as defined in §22-19 as one "which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of the public streets and public ways", obtain a permit from the village prior to engaging in any such activity. As discussed in detail below, the definitions of "charitable organization" and "charitable purposes", as provided in §22-19, are vague and may be read to include organizations either political or religious in character, thereby implicating core principles of the first amendment. Numerous terms contained in §22-20, which sets out the "information" to be supplied in the permit application, are also vague. The particular provision whose constitutionality was litigated below in isolation, §22-20(g), is only one of these items of information which is fatally vague. Consequently, the entire permit and permit application scheme is facially unconstitutional pursuant to both *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976), and the long line of decisions holding unconstitutional laws which grant discretion to an official to grant or deny permits for the exercise of rights protected by the first amendment. Thus, petitioner's contention that summary judgment was improperly granted is without merit since the law is unconstitutional on its face.

That laws which delegate standardless authority to officials to grant or to deny permits for the exercise of first amendment rights are facially unconstitutional for overbreadth is well established. *See, e.g., Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969); *Staub v. City of Baxley*, 355 U.S. 313 (1958); *Kunz v. New York*, 340 U.S. 290 (1951); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Lovell v. City of Griffin*, 303 U.S. 444 (1938). A similar doctrine is applicable under the vagueness principles of *Hynes v. Mayor of Oradell, supra*, at 621 n. 5.[1] As further discussed below, the ordinance is facially unconstitutional for the further reason that it does not contain

[1]Petitioner apparently submitted no affidavit in opposition to respondent's affidavit to the effect that respondent intended to engage in first amendment-protected activity.

the procedural safeguards mandated by *Freedman v. Maryland,* 380 U.S. 51 (1965), and its progeny for laws which require official permission as a condition for the exercise of first amendment-protected rights.

Accordingly, since Schaumburg's permit scheme itself is facially invalid, the other provisions of the ordinance, Schaumburg, Ill., Code §§22-22 (fee); 22-23 (prohibition of solicitation by any person convicted of or indicted for felony); 22-24 (curfew) (1974), all of which apply only to solicitations under authority of a permit, must also fall. But in any event, as discussed below, many of these specific restrictions are themselves independently unconstitutional.

II.

SOLICITATION OF FINANCIAL SUPPORT FOR A CHURCH IS EXPRESSION PROTECTED BY THE FIRST AMENDMENT.

The principle that the first amendment protects fund solicitations to support a church was established forty years ago. As this principle preserves religious belief in a capitalist society, it is no less vital today.

There is no inherent reason to differentiate an appeal for support of a church from an appeal for belief in its tenets, which no one would dispute is protected expression. On the contrary, freedom of expression protects the advocacy of action almost as zealously as it does the abstract expression of ideas. *Compare Brandenburg v. Ohio,* 395 U.S. 444, 447 (1969), *with Yates v. United States,* 354 U.S. 298, 318-27 (1957). "'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts." *Thomas v. Collins,* 323 U.S. 516, 537 (1945).

Consequently this Court has treated religious solicitation as protected speech. An Irvington, New Jersey, ordinance forbade solicitation, and a conviction under it was upheld by the New Jersey courts because the defendant's religious solicitation amounted to the solicitation of monetary contributions without a permit. This Court reversed because the licensing law which regulated this activity was unconstitutional on its face.

> *Conceding that fraudulent appeals may be made in the name of charity and religion,* we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house.

Schneider v. New Jersey, 308 U.S. 147, 164 (1939) (emphasis added).

Similarly, the ordinance reviewed in *Cantwell v. Connecticut,* 310 U.S. 296 (1940), affected only those who wished to solicit funds and required a certificate from a public official as a condition to do so. Once again this Court invalidated a conviction for violating the ordinance because

> *to condition the solicitation of aid for the perpetuation of religious views* or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, *is to lay a forbidden burden upon the exercise of liberty protected by the Constitution.*

Id. at 307 (emphasis added).

In later cases, the Court again noted the intimate relationship between fundraising and the dissemination of ideas. In reliance upon *Cantwell* and *Schneider*, this Court held that handbills could not be deemed to be commercial and consequently prohibitable "because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes". *Jamison v. Texas*, 318 U.S. 413, 417 (1943). Similarly, the incidental solicitation of donations did not render the activities of religious colporteurs commercial.

> It is plain that religious organizations need funds to remain a going concern. . . . Freedom of speech, freedom of the press, freedom of religion, are available to all, not merely to those who can pay their own way.

Murdock v. Pennsylvania, 319 U.S. 105, 111 (1943).[2]

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[2]In reliance upon these decisions the lower courts have unanimously agreed that the solicitation of funds by the Unification Church is protected by the first amendment. No fewer than six recent cases have declared the protected status of this activity to be "well-settled".

> It is well-established that solicitation of donations for church support is a protected First Amendment activity. *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). . . .

Holy Spirit Association for the Unification of World Christianity v. Alley, 460 F.Supp. 346, 347 (N.D. Tex. 1978). *Accord, Cherris v. Amundson*, 460 F.Supp. 326, 327 (E.D. La. 1978); *Smith v. City of Manchester*, 460 F.Supp. 30, 34 (E.D. Tenn. 1978); *Hall v. McNamara*, 456 F.Supp. 245, 246 (N.D. Cal. 1978); *Swearson v. Meyers*, 455 F.Supp. 88 (D. Kan. 1978); *Evans v. Fullard*, 444 F.Supp. 1334, 1337 (W.D. Pa. 1978). As explained in still another Unification Church case, the activities of the church fundraisers

> are non-commercial in nature. Members of the Church do not receive commissions for their work. In making their door-to-door solicitations, nothing is ever sold. Contributions are requested and items may be gratuitously extended to the contributor because of his or her donation, but if a resident inquires as to the price of an item the church member explains that it is not for sale and that the item is offered to contributors only as a token of appreciation for a contribution. The average value of the items offered is 40 cents, whereas the average contribution is between one and two dollars and, in many instances, the resident rejects the gift despite the fact that a contribution has been made.

Love v. Mayor of Cheyenne, 448 F.Supp. 128, 130-31 (D. Wyo. 1978). *See also Levers v. City of Tullahoma*, 446 F.Supp. 884, 886 (E.D. Tenn. 1978) (temporary restraining order); *Heritage Village Church and Missionary Fellowship, Inc. v. North Carolina*, 253 S.E.2d 473 (N.C. Ct. App. 1979) (Unification Church intervening party).

Similarly, solicitation by the International Society for Krishna Consciousness has consistently been held to be protected expression as well. *See ISKCON v. Bowen*, No. 78-2278 (7th Cir. May 16, 1979); *ISKCON v. Rochford*, 585 F.2d 263 (7th Cir. 1978); *Fernandes v. Limmer*, 465 F.Supp. 493, 497 (N.D. Tex. 1979); *United States v. Silberman*, 464 F.Supp. 866, 872 (M.D. Fla. 1979) (collecting seventeen earlier cases); *United States v. Boesewetter*, 463 F.Supp. 370, 372 (D.D.C. 1978). Religious solicitation by the Seventh Day Adventist sect, *Espinosa v. Rusk*, No. CIV 78-915-B (D.N.Mex. March 22, 1979), and non-denominational evangelists, *Heritage Village Church and Missionary Fellowship v. North Carolina, supra*, as well as of course the activities of the Jehovah's Witnesses, have also been held to be constitutionally protected.

Indeed, a contrary conclusion would be inconsistent with the pragmatic necessities of freedom of expression. The relationship between financial resources and expression was squarely recognized in the political arena by *Buckley v. Valeo*, 424 U.S. 1 (1976).

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation

> costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.
>
> The expenditure limitations contained in the [Federal Election campaign] Act represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech.

Id. at 19 (footnote omitted).

The same financial reality inescapably exists for religious expression as well. Pamphlets,[3] magazines,[4] books,[5] phonograph records,[6] lecture halls,[7] and television broadcast time,[8] all cost money. The ability to proselytize and to communicate religious concepts and doctrines is dependent upon money. To the extent that the ability of churches to raise funds is restricted, their ability to spread their gospel is restricted just as the limitation in permissible expenditure limited political expression in *Buckley*.

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[3]*See Schneider v. New Jersey*, 308 U.S. 147 (1939) (leafletting by Jehovah's Witnesses).

[4]*See ISKCON v. Conlisk*, 374 F.Supp. 1010 (N.D. Ill. 1973) (magazine distribution by Hare Krishna sect).

[5]*See Murdock v. Pennsylvania*, 319 U.S. 105 (1943) (book distribution by Jehovah's Witnesses).

[6]*See Cantwell v. Connecticut*, 310 U.S. 296 (1940) (use of phonograph record in connection with solicitation by Jehovah's Witnesses).

[7]*See Terminiello v. City of Chicago*, 337 U.S. 1 (1948) (speech given in lecture hall by suspended Catholic priest).

[8]*See Heritage Village Church and Missionary Fellowship, Inc. v. North Carolina*, 253 S.E.2d 473 (N.C. Ct. App. 1979) (solicitation to support religious broadcasting).

Besides the general relationship of finances to free and effective expression found crucial in *Buckley*, there is a further relationship between finances and the free exercise of religion. Just as the means of expression require financing, so also do the means of worship. Churches, temples, ministers, priests, vestments, and sacraments (not to mention such mundane expenses as insurance, fuel, and maintenance) do not come free. In order to defray these costs and to be able to worship, a church must be able to seek financial support. Many churches seek support from their own members, and their right to do so would never be questioned. *See Murdock v. Pennsylvania, supra* at 111 ("the passing of the collection plate" viewed as paradigm religious activity). But a new, struggling religious movement would be strangled at its birth if it were restricted to only this avenue of support since, by definition, it would not have the membership from which to draw support.[9]

Consequently, if religious solicitation were not expression fully protected by the first amendment to at least the same degree as is solicitation for political

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[9]For example, the fledgling International Society for Krishna Consciousness found itself in precisely this position a few years ago.

> Evidence also presented by plaintiffs revealed that they are struggling economically as a new religion and that the majority of monies obtained by the group are a result of requested contributions while handing out religious literature. These monies are used to purchase more religious literature to hand out and to support the local Temple in New Orleans.

ISKCON v. City of New Orleans, 347 F.Supp. 945, 947 (E.D. La. 1972). For a scholarly description of this sect, see J. Judah, *Hare Krishna and the Counterculture* (1974).

causes,[10] existing churches with large and prosperous current memberships could be afforded a preferred status, free from competition by new, vigorous religious movements, whose growth would be effectively stifled by restrictions on public solicitation of funds for their support.

This result would be plainly inconsistent with the command of the religion clauses of the first amendment. "[T]he basic purpose [of the religion clauses] . . . is to ensure that no religion be sponsored or favored, none commanded, and *none inhibited*." *Walz v. Tax Commission*, 397 U.S. 664, 669 (1970) (emphasis added). "The First Amendment mandates governmental

[10] *Amicus* does not dispute, of course, as the Court has several times recognized in dictum, that a municipality may require a person, "before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent," *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940); *accord*, *Hynes v. Mayor of Oradell*, 425 U.S. 610, 618-19 (1976); *Martin v. City of Struthers*, 319 U.S. 141, 148 n.14 (1943), a restriction which may not be permissible where only "pure" expression of ideas is at issue. *See Hynes v. Mayor of Oradell*, *supra* at 628 n.4 (Brennan, J., concurring); *Thomas v. Collins*, 323 U.S. 516, 540 (1945). Apart from this possible distinction, however, the Court has apparently never placed any greater restriction on political or religious solicitations than it has on political or religious "pure" speech. *Compare, e.g., Cantwell v. Connecticut, supra* at 306-07 (state may regulate "time and manner of solicitation"), *with, e.g., Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972) (state may impose "reasonable 'time, place and manner' regulations" on speech). Indeed, *Cantwell* emphasized that a regulation which "unreasonably obstruct[s] or delay[s] *the collection of funds*" cannot be upheld. *Cantwell v. Connecticut, supra* at 305 (emphasis added). Accordingly, since devices such as the 75% limitation imposed by Schaumburg, Ill., Code §22-20(g) (1974), which may act arbitrarily to prevent religious or political solicitation in the first instance, go far beyond any "reasonable registration or identification requirement," *Thomas v. Collins, supra* at 540, restrictions such as these must be measured by the strictest standards.

neutrality between religion and religion. . . ." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). In sum, "indirect coercive pressures upon religious minorities to conform to officially-approved religion . . ." violate the religion clauses. *Engel v. Vitale*, 370 U.S. 421, 431 (1962). *See Wisconsin v. Yoder*, 406 U.S. 205 (1972) (effect of compulsory education upon the Amish); *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (second prong of general establishment clause test is effect of enactment); *Sherbert v. Verner*, 374 U.S. 398 (1963) (effect of work requirement on Sabbatarian).

Thus on the basis of both logic and precedent, religious solicitation is fully protected expression. The Schaumburg ordinance should therefore be subjected to the most exacting first amendment scrutiny, since it can be, and indeed has been, interpreted to include religious solicitation within its scope.

III.

THE PERCENTAGE LIMITATION RESTRICTS RELIGIOUS SOLICITATION WITHOUT SERVING A COMPELLING STATE INTEREST AND IS THEREFORE UNCONSTITUTIONAL.

In light of the protected nature of religious expression, the unconstitutionality of the percentage limitation, Schaumburg, Ill., Code §22-20(g) (1974) is readily apparent. Schaumburg, in effect, is attempting to limit the right to solicit to only those churches or charities which are "efficient" by the Village's own definition. But as to a religion, at least, the cost of conducting the solicitation may not constitutionally be inquired into by Schaumburg.

This truth was recognized long ago by Justice Henshaw of the California Supreme Court. A Los Angeles ordinance had required all charities, including those operated by churches, to obtain a permit to solicit contributions. It was applied to the activities of the Salvation Army, which was unable to obtain a permit because it could not meet a statutorily prescribed "reasonable standard of efficiency." *In re Dart*, 172 Cal. 47, 53, 155 P. 63 (1916). After holding that the ordinance unconstitutionally delegated a standardless licensing authority to the licensing commission, the opinion noted that

> there is another aspect of the question clearly presented, and as clearly demanding consideration. This is the religious aspect. . . . [D]oes it demand discussion to establish so plain a truth as that touching religion there is a doubtful zone which legislation should be most reluctant to enter? The founders of the nation recognized it when they placed the great guaranty of religious liberty in the constitution of a free people, and it is for every court to see that the liberty is not encroached upon and that freedom gnawed and impaired by any experimental legislation however well meant. So when legislation does enter that uncertain domain, the fact that it is there must bring to it condemnation. In accordance with the dictate of the constitution itself the doubt will be resolved in favor of religious liberty. And it will be found better in the long run that the free exercise of religion be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to

> the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that *there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed.*

Id. at 55-56 (emphasis added).

Since the Schaumburg ordinance does or at least could apply to even solicitation of contributions by religious groups for religious purposes, see Section II *supra*, the reasoning of *Dart* is all the more persuasive. If the costs of a religious solicitor are fifty cents on the dollar, there will still be many dollars collected that will support the free exercise of the religion. The cost of the fundraising is of no moment to the state. The state has no more authority to direct the allocation of resources of a church than it does to control church government or to resolve property disputes within the church. *See Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952); *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871); *cf. Jones v. Wolf*, 47 U.S.L.W. 4962 (U.S. July 2, 1979) (neutral principles required).[11]

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[11]The application of the percentage limitation to a church might well result in a violation of the establishment clause, as well, through a prohibited entanglement. *See New York v. Cathedral Academy*, 434 U.S. 125 (1977); *Lemon v.*

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Moreover, as this Court has implicitly recognized, because of the protected nature of religious solicitation as expression, only regulation "which does not unreasonably obstruct or delay the collection of funds . . ." may be constitutional.[12] The percentage limitation fails to meet this standard because it completely prevents the collection of funds for any organization which cannot comply. No account is taken of the reasons why the church may not be able to comply, whether they are beyond its control (legal expenses, for instance, *see* Schaumburg, Ill., Code §22-20(a)(2) (1974), caused by arbitrary permit refusals) or whether they are compelled by religious belief (high "salaries", *see*

Kurtzman, 411 U.S. 192 (1973) *("Lemon II"); Lemon v. Kurtzman*, 403 U.S. 602 (1971) *("Lemon I")*.

The entanglement which results from the Schaumburg ordinance arises from its attempt to determine the "cost" of a charitable solicitation in order to determine whether "at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization". Schaumburg, Ill., Code §22-20(g) (1974). The Unification Church, for instance, encourages its followers to venture forth as missionaries, spreading religious truth, and supports them in that activity. The cost of the evangelistic activities is therefore both a "cost" of raising money for the church and also the very essence of a religion composed of itinerant preachers. Schaumburg has no standard by which to apportion funds raised or spent between these two inseparable categories. The same would be true for television worship services which make an appeal for financial support. *See Heritage Village Church and Missionary Fellowship, Inc. v. North Carolina*, 253 S.E.2d 473 (N.C. Ct. App. 1979). But if Schaumburg were even to attempt such a weighing process, it would be forced to evaluate the legitimacy of a church's religious beliefs in order to determine the relative values of these functions to a religious enterprise. This is, of course, a prohibited activity. *United States v. Ballard*, 322 U.S. 78 (1944).

[12]"The clear inference to be drawn from the above quoted statement in *Cantwell v. Connecticut*, is that if a statute *does* unreasonably obstruct and delay the collection of funds, it is open to constitutional attack." *Cherris v. Amundson*, 460 F.Supp. 326, 328 (E.D. La. 1978) (emphasis added).

id., for example, for hierarchical leaders). This partial censorship of protected expression, see Section II *supra*, is therefore blatantly unconstitutional.

Nor can the percentage restriction be supported by the existence of a compelling state interest. Privacy cannot be asserted to be an interest protected by the percentage limitation for the simple reason that solicitors who comply with the percentage restriction or non-solicitors who might also use the public street or call from door-to-door would have an identical impact upon the privacy of the citizens. When Schaumburg permits equally intrusive methods of communication to occur, its interest in privacy "is difficult to take very seriously. . . ." *Smith v. Daily Mail Publishing Co.*, 47 U.S.L.W. 4824, 4827 (U.S. June 26, 1979) (Rehnquist, J., concurring).

Nor is an interest in prevention of fraud a sufficient state interest to justify suppression of expression. "Certainly penal laws are available to punish such conduct." *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Even if a prior restraint may ever be used to police against fraud, the percentage limitation is an overbroad and arbitrary means of achieving this end. The ordinance assumes that any organization which spends 25.1% of its proceeds on the costs of solicitation is "fraudulent," or at least "commercial", while one which spends 24.9% of its proceeds on these costs is not. The assumption is arbitrary at best and actually irrational in a case, for example, where no funds are retained by the organization or its officers but instead are all spent in good faith for fundraising expenses such as rents and advertising. The flat percentage limitation is a far cry from the "narrow specificity" necessary

when first amendment rights are at stake. *NAACP v. Button*, 371 U.S. 415, 433 (1963).[13]

IV.

THE CHARITABLE SOLICITATION ORDINANCE IS UNCONSTITUTIONAL BECAUSE IT VESTS DISCRETION IN OFFICIALS TO GRANT OR TO DENY LICENSES FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS WITHOUT PROVIDING NARROW AND OBJECTIVE STANDARDS TO GUIDE THE DISCRETION.

The first amendment requires that laws which operate as prior restraints contain narrow, objective, and definite standards to guide the licensing authority. This principle has long been recognized as vitally important to the system of freedom of expression.

> The reasoning has been, simply, that *the danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have unbridled discretion over a forum's use*. Our distaste for censorship—reflecting the natural distaste of a free people—is deep-written in our law.

Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 553 (1975) (emphasis added).

One of the earliest overbroad licensing law cases, particularly relevant here because it also involved religious and charitable solicitation, *Cantwell v. Connecticut*, 310 U.S. 296 (1940), held unconstitutional a licensing law that required a public official to make a judgmental assessment of whether a specific religious solicitation campaign posed a threat of fraud to the community. This Court was particularly concerned that the official "is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion." *Id.* at 305.

The Court's most recent decision in this area is *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976), which concerned an ordinance regulating the activities of persons " 'desiring to canvass, solicit or call from house to house' . . . ." *Id.* at 611. In form, the *Hynes* ordinance did not explicitly require a person to obtain prior permission for the activity, but he was required first to "identify" himself to the police. Nonetheless, the Court held the ordinance invalid. The Chief Justice observed that

> [t]o the extent that the ambiguities and the failure to explain what "identification" is required give police the *effective* power to grant or deny permission to canvass for political causes, the ordinance suffers in its practical effect from the vice condemned in *Lovell, Schneider, Cantwell, and Staub*.

Id. (emphasis in the original).[14]

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[13]For this reason, the lower courts, as well as the court below, which have recently considered percentage limitations in the context of religious and political solicitation, as opposed to purely charitable solicitation in the traditional sense of the term, have unanimously held them to be unconstitutional. *Carolina Action v. Pickard*, 465 F.Supp. 576, 581-82 (W.D.N.C. 1979) (political solicitation); *id.*, 420 F.Supp. 310, 311 (1976) (preliminary injunction); *Fernandes v. Limmer*, 465 F.Supp. 493, 504-05 (N.D. Tex. 1979) (religious solicitation); *Heritage Village Church and Missionary Fellowship, Inc. v. North Carolina*, 253 S.E.2d 473, 485-86 (N.C. Ct. App. 1979) (same).

[14]In an action brought by members of the Unification Church, this Court's forty years of case law on standardless licensing laws were recently synthesized by Judge O'Connor of the District of Kansas. Referring to the kind of standards which may permissibly be applied by a public official who

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The present ordinance contains elements of both the features held invalid in the licensing cases cited by *Hynes*, namely, *Cantwell v. Connecticut, supra; Lovell v. City of Griffin*, 303 U.S. 444 (1938); *Schneider v. New Jersey*, 308 U.S. 147 (1939); and *Staub v. City of Baxley*, 355 U.S. 313 (1958), and the feature found invalid in *Hynes* itself. Like the ordinances in the former cases, the Schaumburg enactment specifically requires a prior submission to the licensing authority and its approval of that submission in the form of the issuance of a permit before the regulated activities may be undertaken.[15] Moreover, as in *Cantwell*, such prior approval "involves appraisal of facts, the exercise of judgment and the formation of an opinion," since a permit may issue only "[i]f the village board shall find and determine that all requirements of this article have been met. . . ." Schaumburg, Ill., Code §22-21 (1974).

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decides upon a permit application for church solicitation, Judge O'Connor wrote that

> the standards must be more than mere criteria or guidelines; they must be complete in and of themselves, and leave no factors to be assessed, judgments to be made, or discretion to be exercised by the appropriate licensing official. In other words, *the decision to grant or deny the license application must be virtually a ministerial one.*

Swearson v. Meyers, 455 F.Supp. 88, 91 (D. Kan. 1978) (emphasis in the original). Judge O'Connor's opinion was, in turn, specifically quoted and relied upon by Judge Renfrew in another action brought by Unification Church members. *Hall v. McNamara*, 456 F.Supp. 245, 247 (N.D. Cal. 1978).

[15]Schaumburg, Ill., Code §22-21 (1974) provides as follows:

> All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation shall take place.

Moreover, although the ordinance does not in so many words impart a grant of discretion to the village board, it is, in light of *Hynes*, nevertheless facially unconstitutional. *Hynes* teaches that vague and ambiguous terms even in a mere registration system regulating the exercise of first amendment rights create "an *effective* power to grant or deny permission" for the exercise of those rights. *Hynes v. Mayor of Oradell, supra* at 622 (emphasis in the original).

Hynes sets out the yardstick against which precision of language in an enactment such as this is to be measured.

> The general test of vagueness applies with particular force in review of laws dealing with speech. "[S]tricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser."

Hynes v. Mayor of Oradell, supra at 620. The present ordinance of the Village of Schaumbug woefully fails the test adumbrated in *Hynes*.

First, as in *Hynes*, "the coverage of the ordinance is unclear. . . ." *Id.* at 621. The ordinance provides that every "charitable organization" must apply for a permit. Schaumburg, Ill., Code §22-20 (1974). But the purported definition of what constitutes a "charitable organization", in what appears to be an attempt to be all-inclusive, leaves at least those organizations which are not traditionally considered to be "charities" at a loss to determine whether or not they must apply for a permit.

If such an organization, a church for example, deems itself to be beyond the coverage of the ordinance, and engages in solicitation without applying for a permit under the ordinance, it does so at the peril of a later decision by the Village that it was indeed covered, thereby leaving its members open to criminal prosecution. This result, of course, is precisely the feature condemned in *Hynes*, that, "with respect to the coverage of the ordinance, this law 'may trap the innocent by not providing fair warning.' *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)." *Id.* at 622.

A "charitable organization" is defined by the ordinance as "[a]ny benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation . . . which solicits or collects funds for charitable purposes." Schaumburg, Ill., Code §22-19 (1974). A "benevolent" organization is one which is "marked by a kindly disposition to promote the happiness or prosperity of others. . . . [or] prompted by motives of charity. . . ." *Webster's Third New International Dictionary* 204 (1976). A "philanthropic" organization is one which is "characterized" by "goodwill toward one's fellowmen [especially] as expressed through active efforts to promote human welfare." *Id.* at 1697. A "patriotic" organization is one which is "actuated by love of one's country." *Id.* at 1656. And an "eleemosynary" organization is simply one which is "charitable." *Id.* at 733. Thus, all the definitions of a charitable organization (except possibly patriotic) are merely synonyms which, in substance, mean little, if anything, more than "charitable".[16] Consequently, a "charitable organization" within the meaning of the

[16]The complete dictionary definitions of the terms used in the Schaumburg ordinance are reproduced as Appendix B.

Schaumburg ordinance reduces merely to one which solicits and collects funds for charitable purposes.[17]

A "charitable purpose", however, is defined as "[a]ny charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose". Schaumburg, Ill., Code §22-19 (1974). The attempted definitions of a charitable organization prove thus to be entirely circular. A "charitable organization" and a "charitable purpose" are both defined by means of several adjectives, all of which mean "charitable". And charity, at most, consists of giving help to those in need or to worthy causes. *See Webster's Third New International Dictionary, supra* at 378.

What constitutes a "charity", therefore, cannot be determined without an "appraisal of facts, the exercise of judgment, and the formation of an opinion." *Cantwell v. Connecticut, supra* at 305. A group which seeks money in order to promote a political candidate to run for office would not be likely to think of its cause as "charitable", but Schaumburg could well decide that giving money to aid a political candidate, especially a poor one, is an act of charity. However, the right

[17]The inclusion of the term "not-for-profit" in the definition of a charitable organization, Schaumburg, Ill., Code §22-19 (1974), does not lend the ordinance any greater precision which would save the scope of its coverage from being unconstitutionally vague. If *any* not-for-profit organization must obtain a permit pursuant to the ordinance and therefore comply with the percentage limitation in order to solicit contributions within Schaumburg, then the ordinance would restrict the ability of even political parties to solicit financial contributions and would consequently be undeniably overbroad. *See Buckley v. Valeo*, 424 U.S. 1 (1976). If, as seems more likely, "not-for-profit" merely modifies the other terms of the definition and requires an organization which is *both* charitable in some other sense and not-for-profit to obtain a permit and to comply with the limitation, then it adds nothing to the meaning of the other terms, which define charitable organizations by reference to their purpose.

of an independent group to raise and spend money on behalf of a candidate is protected by the first amendment and most likely could not be restrained by the 75% requirement in any event. *See Buckley v. Valeo,* 424 U.S. 1, 44-51 (1976).

Even if Schaumburg were to disclaim any such application to electoral advocacy, the problem would still remain. If Jane Fonda asks for donations to aid the victims of American imperialism or if Ronald Reagan asks for aid for the victims of Communist aggression, the political nature of the appeal remains even though the appeal now has an arguably charitable character as well. Requests for donations for even the most elementary human needs of food and shelter for civilians on one side of an armed conflict, while resembling traditional charity, may also be, and often are, requests for political contributions to the cause for which that group is fighting. Would the Irish Northern Aid Committee, currently, or the group which sailed medicine to North Viet Nam during the Indo-Chinese conflict, be covered by the ordinance as "charitable" organizations? Perhaps, but perhaps not. The simple point is that no group that solicits money for any political reason can tell whether or not it must apply for a permit as a charitable organization.

Similarly, one would not expect a religious purpose to be considered as "charitable". "Donate to help propagate my creed" is different in function and nature from "donate to help feed the starving poor", but religious corporations and religious bequests have traditionally been treated as functionally equivalent to their charitable counterparts. Schaumburg then could well decide to interpret "charitable" solicitation to include

religious solicitation; but whether or not it has done so is left to guesswork.

Moreover, religious and charitable goals are often inextricably intertwined, for example, a skid row mission which preaches and converts as well as feeds and houses. Whether such an organization is charitable and required to seek a permit cannot be ascertained from the ordinance. Nor can the necessity for a permit be ascertained if religious, political *and* charitable purposes are combined, for example, in a church's appeal for aid to the guerillas and their dependents fighting in Zimbabwe-Rhodesia.

Examples could be multiplied. Are educational appeals charitable? What of an appeal to popularize an idea, such as astrology or vegetarianism? Does the result differ if the idea contemplates political action, for example, prohibition?

Even if any charitable component is enough to bring an organization within the scope of the ordinance, whether "strictly" religious or political organizations would require a permit is still fatally unclear. In the court below Schaumburg argued

> that religious and political organizations are not under sections 22-19 through 22-24 because they are not specifically enumerated in section 22-19. *This is certainly not apparent on the face of the provision;* indeed it seems inconsistent with the broad definition employed. Village counsel admits that inclusion of religious organizations probably would result in impairment of the First Amendment freedoms of such organizations.

Citizens for a Better Environment v. Village of Schaumburg, 590 F.2d 220, 224 n. 5 (7th Cir. 1978) (emphasis added).

However, perhaps the most dramatic evidence of the vagueness of the ordinance's coverage is the fact that despite the explicit representations of the Village's counsel noted by the Seventh Circuit, it has been applied by Schaumburg to the purely religious solicitations of members of the Unification Church. In *Hartman v. Village of Schaumburg*, No. 78 C 4427 (N.D. Ill., filed November 8, 1978), members of the Unification Church sought relief against application of the Schaumburg ordinance to their religious solicitation activities, after the Village had arrested and threatened with future arrests church members engaged in such expression. An ordinance which can be construed to mean one thing one day and another thing the next as it suits municipal convenience is vague virtually by definition.

In sum, what constitutes a "charitable organization" required to obtain a permit is not defined by the ordinance except in circular terms. And "charitable" has no clear meaning which would convey to those who may be subject to the ordinance whether their organization is indeed charitable or is religious, political, or something else not comprehended by it. In this respect, "charitable organization" is as vague as the term " 'Federal, State, County, or Municipal . . . *cause*' " held unconstitutionally vague in *Hynes v. Mayor of Oradell, supra* at 621 (emphasis in the original).

Further, as in *Hynes*, "the [Schaumburg] ordinance does not sufficiently specify what those within its reach must do in order to comply." *Id.* The permit applicant must provide the village board with "[a] written statement of *recent* date that the organization has complied with the provisions of . . . [the Illinois charitable solicitation act]." "Recent" is a relative term whose

meaning depends upon subject and context. Any application could be denied because the statement is not sufficiently "recent"—especially if the village board does not really believe that the organization is or should be classified as charitable because it is controversial or unpopular, or in other words, because of the ideas that it seeks to support.

Also, the permit applicant must provide "[*s*]*atisfactory* proof that the organization is a tax exempt organization under . . . [I.R.C. §503(c)]." Schaumburg, Ill., Code §22-20(f) (1974) (emphasis added). Even more than "recent," "satisfactory" is inherently subjective. Indeed, the courts have long recognized that no objective criteria are possible at all when a decision maker must be "satisfied". *See, e.g., Gibson v. Cranage*, 39 Mich. 49 (1878). Even if "satisfactory" means "reasonably satisfactory," *see, e.g., Mattei v. Hopper*, 51 Cal.2d 119, 123, 330 P.2d 625 (1958), the very fact that judgment must be exercised to determine whether that standard has been met is sufficient to show that the term is impermissibly vague in this context. *See Cantwell v. Connecticut, supra.*

A comparable term was also disapproved in *Hynes v. Mayor of Oradell, supra*, where this Court noted that the ordinance there at issue

> does not explain, for example, whether a "*recognized* charitable cause" means one recognized by the Internal Revenue Service as tax exempt, one recognized by some community agency, or one approved by some municipal official.

Id. at 621 (emphasis in the original).

The heart of the matter is that a power to decide what is "satisfactory" proof is an *effective* power to

deny a permit in the hands of an official who believes that the permit should be denied "in the best interest of the community". *See Smith v. City of Manchester,* 460 F.Supp. 30, 35 (E.D. Tenn. 1978) (exemption clause construed to be absolute prohibition of non-local religious solicitation to prevent Unification Church solicitation).

Similarly, the permit applicant must provide "[*s*]*atisfactory* proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization." Schaumburg, Ill., Code §22-20(g) (1974) (emphasis added). The possibilities for discretionary determinations are even greater under this provision than under the former one because the salaries of solicitors and administrative expenses of the organization may not be deemed to be used for its charitable purposes. *Id.* at §§22-20(g)(1), (2). The village board can well decide that the organization's budget had not been "satisfactorily" stated to exclude these prohibited items if it disapproves of its system of accounting, if it is simply unfamiliar with accounting standards, if it fails to understand or fails to agree with the accountant's judgment, or if it simply dislikes the organization.[18]

The exclusion of salaries paid to solicitors from the calculation of the percentage of proceeds used for the charitable purposes is also vague in the context of religious solicitation. Schaumburg, Ill., Code §22-20(g)(1) (1974). The Unification Church, for instance, encourages its followers to venture forth in the world

[18]*See, e.g., Cherris v. Amundson,* 460 F.Supp. 326, 329 (E.D. La. 1978) (extensive information required in permit ordinance allowed official sufficient authority to evaluate beliefs, practices, and operations of Unification Church and unconstitutionally deny permit thereon).

as missionaries spreading religious truth as they see it and soliciting financial support as they go. The basic necessities of life for these missionaries are provided by the church, not as salaries, not as commission, but instead as stipends that allow them to pursue their mission. The cost of supporting these missionaries is therefore a part of the "charitable" purpose of the church, since that purpose is to convey its message to the world, but Schaumburg may well interpret these support costs as "salaries."

Finally, the application for a permit must be submitted "by a *responsible* officer of the soliciting organization." Schaumburg, Ill., Code §22-21 (1974) (emphasis added). Just as with "recent" date, the village board is entirely free to decide for itself which officers of the corporation are "responsible", and it is free to inform an applicant after the fact that his application was not submitted by a "responsible" officer and was therefore denied.

All of these vague terms are on a par with the term "identification" held vague in *Hynes.* Just as the canvasser in *Hynes* could not predict what the police chief would consider to be sufficient identification, the solicitor here cannot predict what constitutes a "recent" date, "satisfactory" proof, or "responsible" officer. The lack of precision in the terms used by Schaumburg in its application process would easily allow, for example, indefinitely continued rejections of any given application for lack of compliance, where only the village board itself "knew" the "correct" answer to a particular item. Consequently, as in *Hynes,* the village board possesses an *effective* power of censorship through the power to interpret these vague terms to

suit its own purposes, and the ordinance accordingly violates the first amendment.

Moreover, the proper role of this Court is not to supply standards, to interpret, or narrowly to construe these vague terms. Where vagueness and consequent overbroad discretion appear in a first amendment licensing law, the Court's function is narrow and does not consist of creating standards. This Court has specifically renounced any greater power.

> Even assuming that a more explicit limiting interpretation of the ordinance could remedy the flaws that have been pointed out—a matter on which we intimate no view, we are without power to remedy the defects by giving the ordinance constitutionally precise content.

Hynes v. Mayor of Oradell, supra at 622.

There is a compelling reason for this requirement of judicial restraint. For a federal court to reach out to construe and interpret state laws would be inconsistent with basic notions of federalism and comity.

> The federal court may not apply its own narrowing construction and then find the statute as construed not overbroad. . . . There are good reasons for forbidding this. Even though the federal court cannot abstain, it must, in what it decides and how it decides, continue to respect the policies which underlie comity and federalism. We must give appropriate regard to the State's right to conduct its own affairs, including construing its own statute, so long as done within constitutional limits.

Hunter v. Allen, 422 F.2d 1158, 1165 (5th Cir. 1970). *Cf. Younger v. Harris*, 401 U.S. 37 (1971); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941) (abstention doctrines). *See also Winters v. New York*, 333 U.S. 507 (1948); *Murdock v. Mayor of Memphis*, 87 U.S. (20 Wall.) 590 (1875) (Supreme Court has no power to review state construction of its own laws).[19]

V.

THE CHARITABLE SOLICITATION ORDINANCE IS UNCONSTITUTIONAL BECAUSE IT LACKS FIRST AMENDMENT DUE PROCESS PROCEDURAL SAFEGUARDS MANDATED BY FREEDMAN v. MARYLAND.

The Schaumburg ordinance is facially unconstitutional because it lacks vital safeguards that would assure a permit applicant procedural due process. Laws requiring a license or other official permission as a condition to engaging in first amendment expression must pro-

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[19]Another reason that this court may not supply the necessary standards to cure the manifest vagueness of this ordinance is that to do so would require legislative power which a federal court, at least when considering state and local enactments, does not possess. "In the instant case, if this court were to create the missing standards out of whole cloth, it would be engaging in a function properly left to lawmakers." *Shifrin v. Wilson*, 412 F.Supp. 1282, 1293 (D.D.C. 1976). In other words, "to supply a missing term in the ordinance . . . is a matter calling for legislative enactment which the courts are powerless to supply". *Naprstek v. City of Norwich*, 545 F.2d 815, 818 (2d Cir. 1976). *Accord, e.g., Swearson v. Meyers, supra* at 93; *ISKCON v. Englehardt*, 425 F.Supp. 176, 181 (W.D. Mo. 1977); *see, e.g., United States v. Robel*, 389 U.S. 258, 267-68 (1967); *cf. People v. Fogelson*, 21 Cal.3d 158, 167, 577 P.2d 677, 145 Cal.Rptr. 542 (1978) (state supreme court refused to "undertake the essentially legislative task of specifying which of the legitimate municipal interests in regulating solicitation are to be included in permit conditions, nor how such conditions might be drafted").

vide for the four-fold procedural safeguards articulated in *Freedman v. Maryland*, 380 U.S. 51, 59 (1965). (1) The licensor must grant or deny the permit within the briefest possible time and that time must be specified in the statute. (2) If permission is denied or revoked, the statute must require the licensor to institute within a specified brief time period proceedings for a temporary and permanent injunction to restrain the proposed expression, and to assume the burden of proof in such judicial proceedings. (3) Any restraint imposed in advance of a final judicial determination on the merits must be limited by the statute to preservation of the status quo for the shortest possible fixed period. (4) A prompt final judicial decision must be assured. *See Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 560 (1975); *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 367 (1971); *Blount v. Rizzi*, 402 U.S. 421 (1971); *Teitel Film Corp. v. Cusack*, 390 U.S. 141-42 (1968).[20]

Whatever doubt may have once existed about the scope of the requirements developed in *Freedman* in the context of motion picture censorship was put to rest by *Southeastern Promotions, Ltd. v. Conrad, supra.* In the course of the opinion, the Court restated and affirmed the rule of *Freedman* and applied it in the broader context of speech in a public forum.

> The settled rule is that a system of prior restraint avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system. . . . If a scheme that restricts access to the mails must

[20]*See generally* Monaghan, First Amendment Due Process, 83 Harv. L. Rev. 518 (1970); Blasi, *Prior Restraints on Demonstrations*, 68 Mich. L. Rev. 1481 (1970).

> furnish the procedural safeguards set forth in *Freedman, no less must be expected of a system that regulates use of a public forum.* Respondents here had the same powers of licensing and censorship exercised by postal officials in *Blount*, and by boards and officials in other cases.

Id. at 559-61 (emphasis supplied).[21]

The central role of political and religious speech in the system of freedom of expression logically requires that it be given no less due process protection than is afforded to other forms of expression. Justice Harlan recognized this requirement a decade ago in the context of an analogous ordinance which required a permit to parade upon the public streets.

> The *Freedman* principle is applicable here. The right to assemble peaceably to voice political protest is at least as basic as the right to exhibit a motion picture which may have some aesthetic value.

Shuttlesworth v. City of Birmingham, 394 U.S. 147, 162 (1969) (Harlan, J., concurring) (footnote omitted).[22]

[21]The commentators have noted the development of this Court's cases extending the *Freedman* principles to administrative restraints on speech in general. "Every indication seems to be that the *Freedman* standards have become general norms to be applied by the courts in all administrative prior restraint situations." J. Barron & C. Dienes, *Handbook of Free Speech and Free Press* 60 (1979). "[Procedural] [o]verbreadth reasoning has also been used to invalidate schemes which failed to assure adequate judicial review of administrative acts affecting expressional activities." L. Tribe, *American Constitutional Law* §12-36 at 734 (1978).

[22]Solicitation of financial support for a political cause is included within protected political speech, and the right to solicit support for religious and charitable causes is no different

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In reaching this conclusion, Justice Harlan emphasized that the impact and effectiveness of speech relating to public affairs or appeals to the public for the support of a cause are almost as dependent upon their timing as upon their content.

> [S]low moving procedures have a much more severe impact in the instant case than they had in *Freedman*. Though a movie exhibitor might suffer some financial loss if he were obliged to wait for a year or two while the administrative and judicial mills ground out a result, it is nevertheless quite likely that the public would ultimately see the film. In contrast, *timing is of the essence* in politics. It is almost impossible to predict the political future; and when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all.

Id. at 162-163 (emphasis added).[23]

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in principle. See Section ....., *supra*. "The Village admits that 'public interest' groups could come within the purview of section 22-19." *Citizens for a Better Environment v. Village of Schaumburg*, 590 F.2d 220, 225 (7th Cir. 1978). In view of this admission there can be no argument that the observations of Justice Harlan concerned a different variety of expression than that regulated by the Schaumburg ordinance.

[23]The opinion of the Court in *Shuttlesworth* appeared to accept this aspect of Mr. Justice Harlan's concurring opinion. The Court was willing to assume, *arguendo*, that after the "Supreme Court of Alabama [had] performed a remarkable job of plastic surgery upon the face of the [Birmingham] ordinance," *Shuttlesworth v. City of Birmingham*, 397 U.S. 147, 153 (1969), the ordinance "would pass constitutional muster." *Id.* at 155. In a footnote, however, the Court specified that its assumption of constitutionality presumed inclusion of adequate procedural safeguards.

> The validity of this assumption would depend upon, among other things, the availability of expeditious judicial review of the Commission's refusal of a permit.

Id. at 155 n.4.

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Timing is similarly often of the essence in charitable and religious solicitation and public persuasion. An appeal for aid for refugees of the civil war in Nicaragua, a compelling cause as this brief is written, will most likely be unnecessary when it is read. The Salvation Army and other evangelistic sects send their bell ringers out on the street at the Christmas season precisely because generous religious contributions can be anticipated then rather than during the remainder of the year. Therefore, in this context, as in first amendment jurisprudence in general, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).[24]

Indeed, four months prior to the *Shuttlesworth* decision, the Court had quoted *Freedman* and generalized its holding there to a prior restraint on speech in a public forum.

> [A] noncriminal process of prior restraints upon expression "avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system."

Carroll v. President of Princess Anne, 393 U.S. 175, 181 (1968). There is no doubt, of course, that discretionary licensing systems regulating the exercise of rights protected by the first amendment constitute prior restraint and censorship in their "baldest form," *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). As noted in the text, if solidification of this principle were needed, it was supplied by the more recent *Southeastern Promotions* decision.

[24]Consequently, numerous recent decisions of the lower federal courts have held specifically that the *Freedman* procedural safeguards must be present in laws which purport to require official permission or authorization as a condition precedent to literature distribution or religious solicitation or both. *E.g., ISKCON v. Rochford*, 585 F.2d 263, 271-72 (7th Cir. 1978); *Fernandes v. Limmer*, 465 F.Supp. 493, 501-02 (N.D. Tex. 1979); *United States v. Silberman*, 464 F.Supp. 866, 873 (M.D. Fla. 1979); *ISKCON v. Griffin*, 437 F.Supp. 666, 671 (W.D. Pa. 1977). *See also ISKCON v. Bowen*, 456 F.Supp. 437, 443-44 (S.D. Ind. 1978), *aff'd*, No. 78-2278 (7th Cir. May 16, 1979).

Nothing in the Schaumburg ordinance places any time constraints whatsoever on the village board in acting on a permit application, much less by incorporating the stringent *Freedman* requirements. Thus, the board may, either by simple delay or by informing the applicant that his application is improperly drawn, act as a censor, effectively preventing the expression of doctrines or ideas it dislikes. Moreover, because it contains impermissibly vague terms (Section ...., *supra*), the ordinance creates an effective power to deny permits for the exercise of first amendment rights. The specter thus raised by the ordinance is precisely that which *Freedman* condemns and against which its specific safeguards were held to be required in the first instance. The *Freedman* due process requirements are necessary whenever a permit process creates even a *possibility* that a license will be denied. *ISKCON v. Rochford*, 585 F.2d 263, 271-72 (7th Cir. 1978).

However, even assuming *arguendo* that the ordinance does not grant discretion to deny a permit to an applicant who satisfies the 75% requirement, *Freedman* procedural safeguards are necessary nonetheless. None of the numerous cases which discuss and apply *Freedman* contain any intimation that its force is limited to discretionary licensing systems. In fact, this argument was specifically rejected by the Seventh Circuit in its recent decision involving the validity of a registration system for solicitation at O'Hare International Airport. "Even if the officials had *no* discretion in administering these regulations, due process would still require the inclusion of procedural safeguards." *ISKCON v. Rochford, supra* (emphasis added).

The basis for this conclusion is readily apparent. One of the many vices of any system of prior restraint

is the potential for the administrative official to "protect" the public by denying licenses to those of whom he disapproves. No matter what the language of the law or its apparent meaning, the official can construe the law subjectively and throw upon the permit applicant the burden of proving him wrong. Two recent cases brought by Unification Church members illustrate that this possibility is no mere chimera. In one, a provision which simply exempted local churches from the necessity of obtaining a permit for passing the collection plate was stood on its head by the responsible officials and construed to mean that only local churches could obtain permits because the city recorder had decided that denying a permit to non-local churches was "in the best interest of the community". *Smith v. City of Manchester*, 460 F.Supp. 30, 35 (E.D. Tenn. 1978). In another case, a police chief arrested religious solicitors for violation of a so-called "Green River" ordinance, even though, as the city attorney later conceded, the ordinance was "probably inapplicable" because they were not engaged in business. *Love v. Mayor of Cheyenne*, 448 F.Supp. 128, 131-32 (D. Wyo. 1978).

The *Freedman* procedures thus serve to avoid lawless conduct by a licensor as well as mistaken conduct. In either case, these procedural safeguards are necessary for the protection of fragile first amendment rights, since a delay in their exercise stifles expression no matter what the reason behind it. *See National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977) (injunction denies free speech pending review).

Not one of the four safeguards is included in the ordinance. No time limit, brief or otherwise, is specified as to the processing of permit applications; no require-

ment is included respecting judicial review; no limitation on a temporary restraint to preservation of the status quo during judicial review is included; and no prompt judicial review is assured or even contemplated.

Accordingly, for utter lack of *Freedman* due process procedure alone, the ordinance must be held unconstitutional. "No claim is made, or can there be, that the ordinance complies with the procedural requirements for prior censorship set forth in *Freedman v. Maryland* . . ." *Burton v. Municipal Court,* 68 Cal.2d 684, 695, 441 P.2d 281, 68 Cal.Rptr. 721, 728 (1968).

VI.

THE ORDINANCE CONTAINS IMPERMISSIBLE RESTRAINTS ON THE EXERCISE OF FIRST AMENDMENT RIGHTS.

In addition to the vagueness which creates an opportunity for censorship, the ordinance contains several other restrictions on solicitation. These regulations are not content-neutral. Rather the ordinance selects for regulation and consequent partial suppression a particular kind of speech, a solicitation "of any money or property of any kind or value", Schaumburg, Ill., Code §22-19 (1974), by a charitable organization (one which solicits and collects funds for a charitable purpose). Consequently, since the ordinance involves censorship, only a compelling state interest is sufficient to justify the restrictions.

This stringent standard is at the very heart of the meaning of the first amendment. If the first amendment is to protect freedom of expression, censorship must be tolerated only in the most exceptional circumstances. Therefore, whether or not content restriction was intended, *e.g., Wooley v. Maynard,* 430 U.S. 705 (1977),

and whether or not the motive of the state is praiseworthy, *e.g., Linmark Associates, Inc. v. Township of Willingboro,* 431 U.S. 85 (1977), only the most persuasive demonstration of necessity is sufficient to contravene the command of the first amendment. The most thorough exposition of this principle appeared in a case in which the practice of patronage was shown to be tantamount to "coerced belief" and thus a censorial restriction of the belief and association aspects of freedom of expression. *Elrod v. Burns,* 427 U.S. 347, 355 (1976).

> It is firmly established that a significant impairment of first amendment rights must survive exacting scrutiny. . . . "This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct governmental action, but indirectly as an unintended but inevitable result of the government's conduct. . . ." *Buckley v. Valeo, supra,* 424 U.S. at 65. Thus encroachment "cannot be justified upon a mere showing of a legitimate state interest." *Kusper v. Pontikes,* 414 U.S. at 58. The interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest. . . . Moreover, it is not enough that the means chosen in furtherance of the interest be rationally related to that end.

Id. at 362 (citations omitted).

Numerous other cases insist upon the demonstration of the existence of a compelling state interest in order to justify censorship. *See, e.g., First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978); *Nebraska Press Association v. Stuart,* 427 U.S. 96 (1976);

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974); *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). "State action impinging on free speech and association will not be sustained unless the governmental interest asserted is compelling." *Talley v. California*, 362 U.S. 60, 66 (1960) (Harlan, J., concurring).[25]

A. The Prohibition of Solicitation by Convicted or Indicted Felons Is an Invalid Prior Restraint.

Under the charitable solicitation ordinance, a charitable organization may not "utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony". Schaumburg, Ill., Code §22-23 (1974). The rationale for this blacklisting of convicted and indicted[26] felons from exercise of first amendment rights is presumably that these persons are more likely than others to commit a criminal act in the course of solicitation of charitable contributions. But this Court has long insisted that violations of the law be deterred by the threat of criminal sanctions rather than by prior restraints on expression which

[25]*See also Wright v. Chief of Transit Police*, 558 F.2d 67, 68 n.1 (2nd Cir. 1977) (compelling state interest must support area ban); *United States v. Silberman*, 464 F.Supp. 866, 873 (M.D. Fla. 1979) (compelling interest must justify regulation of first amendment activities).

[26]The inclusion of persons who have been merely *indicted* for a felony multiplies the unconstitutionality of the provision as a whole and adds to the egregious nature of the suppression of first amendment rights explained in this section. Schaumburg has made an indictment the basis for forfeiture of first amendment rights even though prior proof of guilt beyond a reasonable doubt is the constitutional requisite for imposing punishment consistent with the due process clause. *See Jackson v. Virginia*, 47 U.S.L.W. 4883 (U.S. June 28, 1979); *In re Winship*, 397 U.S. 358 (1970).

silence both those who would abuse the exercise of this precious right and those who would not.

The classic exposition of this principle is *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931). There a statute which provided for abatement as a public nuisance of a newspaper which had *already* published nine "malicious, scandalous, and defamatory" issues was held unconstitutional. Even though further outrageous issues could well be expected in the future, Mr. Chief Justice Hughes noted that

> [t]he fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.

Id. at 720.

The same point was made by *Dejonge v. Oregon*, 299 U.S. 353, 364 (1937).

> These [first amendment] rights may be abused by using speech or press or assembly in order to incite violence or crime. The people through their Legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed.

This principle was then specifically relied upon in a decision holding various standardless licensing ordinances (including a charitable solicitation ordinance) to be unconstitutional because they created a *possibility* of an unjustified prior restraint. The Court conceded

that fraudulent appeals may be made in the name of religion, but held nonetheless that

> [a] municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval. . . . Frauds may be denounced as offenses and punished by law. Trespass may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may import the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

Schneider v. New Jersey, 310 U.S. 147, 164 (1939).

The same point was soon repeated, again in the context of a standardless charitable solicitation ordinance.

> Nothing we have said is intended to even remotely imply that, under the cloak of a religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct.

Cantwell v. Connecticut, 310 U.S. 296, 306 (1940).

And *Kunz v. New York,* 340 U.S. 290 (1951), overturned a denial of a speaker's permit to an applicant who had abused his free expression privileges in the past.

> The Court below has mistakenly derived support for its conclusion from the evidence produced at the trial that appellant's religious meetings had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence. "In the present case, we have no occasion to inquire as to the permissible scope of subsequent punishment." *Near v. Minnesota,* 283 U.S. 697 (1931). We do not express any opinion on the propriety of punitive remedies which the New York authorities may utilize.

The import of these decisions is that, when first amendment rights are at stake, an absolute prohibition of future expression based upon past misconduct is constitutionally impermissible.[27] The total prohibition

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[27]The lower courts have therefore invalidated disqualification provisions like the Schaumburg ordinance because they contravene the constitutional preference for subsequent punishment rather than prior restraints. For instance, the California Supreme Court has held that

> [t]o interpret the ordinance in this case to permit denial of a license because of a past conviction of violating Penal Code section 311.2 [obscenity] would do more than create a hazard to protected freedoms; it would suppress them altogether. The penalty for violating section 311.2 does not include a forfeiture of First Amendment rights, and the risk that criminal sanctions will be insufficient to deter future violations of that section cannot justify the county's attempted forfeiture of those rights on the theory that past violators are unfit to operate bookstores.

Perrine v. Municipal Court, 5 Cal.3d 565, 665, 488 P.2d 648, 97 Cal.Rptr. 320, 325 (1971), *cert. denied,* 404 U.S. 1038 (1972).

The most recent decision on this issue, *Natco Theatres, Inc. v. Ratner,* 463 F.Supp. 1124, 1129 (S.D.N.Y. 1979), relied upon *Perrine* and upon two similar state supreme court cases, *City of Seattle v. Bittner,* 81 Wash.2d 747, 505 P.2d 126 (1973) (denial of theater license if applicant or its officers had been convicted of a crime involving moral turpitude or fraud within ten years), and *Alexander v. City of St. Paul,* 303 Minn. 201, 227 N.W.2d 370 (1975) (rescission of a theater license if operator or the business' principals convicted of any of a number of crimes) to hold that

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of felons from charitable solicitation within Schaumburg therefore cannot be justified.

Even if the use of a prior restraint were ever a proper solution to a problem of possible criminality of solicitors, the identifying characteristic which triggers its application here, a felony conviction, is far too inexact and unreliable a predictive factor to achieve the goal of preventing criminal conduct. "The problem of prediction is the key to the doctrine of prior restraint." *ISKCON v. Kearnes,* 454 F.Supp. 116, 122 (E.D. Cal. 1978). Some convicted felons may well use the identity of a solicitor to commit further crimes, but many or most will not and will be wrongfully restrained from exercising their first amendment rights, while others who are not so restrained may commit crimes. As the California Supreme Court recognized, in the first amendment area one cannot assume that because a person has in the past violated a statute, he will violate it again. *Perrine v. Municipal Court,* 5 Cal.3d 665, 488 P.2d 648, 97 Cal.Rptr. 320 (1971), *cert. denied,* 404 U.S. 1038 (1972).[28] The highly

> [a] regulatory scheme under which a license necessary to the exercise of First Amendment rights may be denied or revoked because of a past conviction for any felony (and for certain misdemeanors), constitutes a system of prior restraint. Such a scheme is constitutionally suspect and subject to the closest scrutiny. . . . In such situations the appropriate remedy is not to inhibit the right to sell a book or exhibit a movie, but rather, where applicable, to prosecute for violation of the obscenity laws.

Natco Theatres, Inc. v. Ratner, supra at 1129-30.

[28]Indeed, compared to *Perrine,* the Schaumburg ordinance is almost a fortiori overbroad since the *Perrine* ordinance was limited to a violation of a statute which prohibited the very conduct which the prior restraint sought to prevent. Schaumburg, in contrast, has made conviction of *any* felony the basis for disqualification from the exercise of first amendment rights. For example, under the ordinance conviction for violation of 26 U.S.C. §2740 (Supp. 1979) (speculation in sugar by official with sugar regulatory authority) is made the basis for a prediction that this person may commit a violent crime while soliciting donations for the Environmental Defense Fund or may embezzle from funds raised for the support of a religious mission. This presumption lacks even a rational basis, *see, e.g., Cleveland Board of Education v. LaFleur,* 414 U.S. 633 (1974), let alone the extreme reliability that would be necessary to justify a prior restraint.

speculative nature of the prediction of criminal activity is, therefore, an insufficient justification to restrict freedom of expression, notwithstanding the undeniable value of crime prevention. *See Nebraska Press Association v. Stuart,* 427 U.S. 539, 562 (1976); *Organization for a Better Austin v. Keefe,* 402 U.S. 415, 419 (1971) (prior restraints bear heavy burden of justification).

In sum, whether or not an applicant has engaged in improper or even unlawful activity in the past, he may not *ipso facto* be forever precluded from engaging in activity protected by the first amendment in the future. "We are here concerned with suppression —not punishment." *Kunz v. New York,* 340 U.S. 290, 295 (1951). Consequently, denial of a permit on any grounds of past misconduct constitutes "a classic instance of impermissible overbreadth", *People v. Taub,* 37 N.Y.2d 530, 337 N.E.2d 754, 757, 375 N.Y.S. 2d 303 (1975), because "a free society prefers to punish the few who abuse rights of speech after they break the law rather than to throttle them and all others beforehand". *Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 559 (1975).

B. Exaction of a Flat Fee From Solicitors Burdens Expression and Is Therefore Unconstitutional.

The *Schaumburg* regulatory scheme requires payment of a nonrefundable ten dollar fee. Schaumburg, Ill., Code §22-22 (1974). The amount of this exaction

may appear to be nominal, but a large fee may be imposed as easily as a small one, thus suppressing freedom of expression. Therefore, whatever the amount of this fee or tax, long-established constitutional principle leaves no doubt that it is unconstitutional.

Just such a flat licensing tax for canvassing or soliciting was made the condition for license in *Murdock v. Pennsylvania,* 319 U.S. 105 (1943). A conviction for violating the license requirement was reversed because the imposition of the tax as a prerequisite for obtaining the license was itself a restriction of freedom of expression which rendered the license scheme invalid on its face.

The constitutional vice of taxes of this nature is that they are directly imposed upon first amendment rights and may therefore be used to suppress or to selectively control their exercise.

> The tax imposed . . . is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. . . . Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. . . .
>
> Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.

Id. at 112 (citation omitted).

Whether or not the taxes imposed are reasonable in their rates is irrelevant because they constitute prior restraints upon freedom of expression.

> That is almost uniformly recognized as the inherent vice and evil of this flat license tax. . . . [A] person cannot be compelled to purchase, through a license fee or a license tax, the privilege freely granted by the Constitution. So it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioner's religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment.

Id. at 114 (footnote and citation omitted).

Cox v. New Hampshire, 312 U.S. 569 (1941), is not to the contrary. The ordinance considered in *Cox* "was applicable only 'to organized formations of persons using the highways. . .'" *Id.* at 575. The obvious advantage of the permit system was "to afford opportunity for proper policing" and to prevent conflicts between competing parades. *Id.* at 576. The ordinance was thus solely concerned with an activity which imposed upon the government direct costs of policing and of housekeeping and was tailored to compensate the government for these costs.

> "The charge," said the [New Hampshire supreme] court, "for a circus parade or a celebration procession of length, each drawing crowds of observers, would take into account the greater public ex-

> pense of policing the spectacle, compared with the slight expense of a less expensive and attractive parade or procession, to which the charge would be adjusted." The fee was held to be "not a revenue tax, but one to meet the expense incident to the administration of the Act and to maintenance of public order in the matter licensed."

Id. at 576-77 (quoting *State v. Cox*, 91 N.H. 137, 144, 16 A.2d 508, 513-14 (1948)). The holding of *Cox* was simply that "[t]here is nothing contrary to the constitution in the charging a fee *limited* to the purposes stated". *Id.* (emphasis added). In other words, when the exercise of first amendment rights imposes affirmative cost upon the government, the government may recoup at least part of that cost.

Read in this context, the *Cox* holding is both good sense and sound economics. An administrative fee may be required when the government provides goods or services on the assumption that a market system will assure their distribution in the most efficient possible manner. *See United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631 (1973); Michelman, *Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 Harv. L. Rev. 7 (1969).

But here, Schaumburg does not provide any service. Instead it seeks to regulate for its own purposes and interests. A charitable solicitor does not create any special need for policing. That anything more than routine neighborhood police patrols would be necessary to deal with charitable solicitation is unlikely in the extreme. In any event, Schaumburg has made no attempt to correlate the fee with any police cost incurred. Even if some policing cost could be attributed to the

presence of solicitors, it would be no greater than that which would be created by the presence of a political canvasser who does not solicit contributions or an opinion pollster, neither of which Schaumburg has chosen to regulate or to subject to a licensing fee. Policing cost simply cannot, therefore, justify the Schaumburg charitable solicitation fee.

Nor does Schaumburg perform any housekeeping services, any content-neutral regulation of the use of the forum. As many groups may obtain permits as happen to qualify for them. No "systematic, consistent and just order of treatment" to secure the convenient use of a public forum by the speaker and the general public alike is mandated. Instead, Schaumburg seeks to license the exercise of a first amendment right in order to serve its own notions of the public interest. Since the public presumably is the beneficiary of the operation of the ordinance, then the public in all fairness should bear its cost. In sum, no service and no benefit is conferred upon the permit applicant of any kind, and by hypothesis no market for the governmental benefit could possibly exist. What Schaumburg has in fact done is to impose regulation of first amendment activities supposedly in the "public interest" and then attempt to transfer that cost to the group regulated.

The very existence of this financial exaction with no compensating benefit will prevent those individuals who are unable to comply with it from exercising their first amendment rights. *See Boddie v. Connecticut*, 401 U.S. 371 (1971). For this reason, a fee was rejected as a condition for exercising the right to vote upon reasoning that is directly analogous to the exercise of first amendment rights.

> It is argued that a State may exact fees from citizens for many different kinds of licenses; that if it can demand from all an equal fee for a driver's license, it can demand from all an equal poll tax for voting. But we must remember that the interest of the state, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race are traditionally disfavored. . . . To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. *In this context—that is, as a condition of obtaining a ballot—the requirement of fee paying causes an "invidious" discrimination* that runs afoul of the Equal Protection Clause.

Harper v. Virginia Board of Elections, 383 U.S. 663, 668 (1966) (emphasis added, footnote and citations omitted).

The same irrelevance of wealth to any legitimate governmental interest is present here. *Hull v. Petrillo,* 439 F.2d 1184, 1186 (2d Cir. 1971). The right to express opinions and to solicit support for a cause on the basis of those opinions is a fundamental right, as was the exercise of the ballot in *Harper,* and likewise it cannot be restricted except for the most compelling reasons. *Compare Buckley v. Valeo,* 429 U.S. 1 (1976), *with Harper v. Union Free School District No. 15,* 395 U.S. 621 (1969). Wealth is not germane to the ability to spread ideas and to garner support.

"[T]he process of qualifying candidates for a place on the ballot may not constitutionally be measured solely in dollars." *Lubin v. Pannish,* 415 U.S. 709, 716 (1974). Neither may the process by which groups or individuals qualify ideas for the consideration and attention of the public be measured by dollars.

Thus, only if the state provides services for which compensation would be fair under the rationale of *Cox* can it exact a fee for the exercise of first amendment rights. In the absence of such services, the Schaumburg exaction is a tax rather than a regulatory fee.[29] The tax is unconstitutional both because it could be used to deter the exercise of first amendment rights and because it will inevitably prevent those who cannot pay from exercising these rights. "Freedom of speech, freedom of the press, freedom of religion are available

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[29]Even if Schaumburg could constitutionally impose some fee for a permit for the exercise of first amendment rights under these circumstances, the fact that the fee bears no relationship to the cost of processing any particular application fatally impeaches it and reveals it to be a tax. The fee simply cannot be one which is incident to meeting the expense of administering the Schaumburg scheme if an application which has to be carefully evaluated and investigated by the city council and one which is routinely approved by a moment's glance are treated identically. The expense of administering the Schaumburg ordinance will vary from application to application. A flat fee, unlike the charge approved by *Cox,* is unrelated to actual cost and is therefore necessarily a tax on the exercise of a constitutional right. For this reason, analogous flat fees for the exercise of first amendment rights have been held unconstitutional by the lower courts. *See, e.g., Fernandes v. Limmer,* 465 F.Supp. 493 (N.D. Tex. 1979); *ISKCON v. Lentini,* 461 F.Supp. 49 (E.D. La. 1978); *ISKCON v. Griffin,* 437 F.Supp. 666 (W.D. Pa. 1977); *cf. Bayside Enterprises, Inc. v. Carson,* 450 F.Supp. 969 (M.D. Fla. 1978); *Moffett v. Killian,* 360 F.Supp. 707 (E.D. Pa. 1966); *New Times, Inc. v. Arizona Board of Regents,* 20 Ariz.App. 422, 513 P.2d 960 (1973) (cases in which flat fees proven to be disproportionate to costs of regulation and hence unconstitutional).

to all, not merely to those who can pay their own way." *Murdock v. Pennsylvania, supra* at 111.

C. The Curfew, on Its Face, Abridges the Immemorial Right to Communicate in Public Streets and Parks and, in Any Event, Is an Overbroad Restriction on Expression.

Schaumburg, Ill., Code §22-24 (1974) restricts charitable solicitations to the hours of 9:00 a.m. to 6:00 p.m. and excludes Sunday completely. The restriction is not limited to door-to-door solicitation. Instead the curfew applies to all solicitations within the village and completely closes the public streets and parks to this variety of expression for more than two-thirds of the time. A time restriction which thus partially closes the traditional "public fora" should be subjected to the closest constitutional scrutiny.

The requirement that restrictions on expression must serve a compelling state interest is most critical in the context of the classic "public forum." The beginning proposition is, of course, that certain public places, such as a city's streets and parks, occupy a central position with respect to the rights guaranteed by the first amendment, a position hallowed by history and tradition as well as by the amendment's legal mandate. The streets and parks are places which "have achieved a special status in our law." L. Tribe, *American Constitutional Law* §12-21 at 689 (1978). In Professor Kalven's words, these places are subject to "a kind of first amendment easement," Kalven, *The Concept of the Public Forum:* Cox v. Louisiana, 1965 Sup. Ct. Rev. 1, 13, and their use by the people for the exercise of basic liberties cannot be lightly abated.

This principle was first set forth in plenary fashion in *Hague v. CIO,* 307 U.S. 496, 515-16 (1939) (opinion of Roberts, J.)

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

Soon after *Hague,* Justice Roberts' words were fully endorsed by the entire Court in a series of opinions which irrefutably established a comprehensive view of the streets and parks as a public forum. *See, e.g., Jamison v. Texas,* 318 U.S. 413, 415-16 (1943); *Schneider v. New Jersey,* 308 U.S. 147, 160 (1939). More recent cases have left no doubt as to the continuing vitality of Justice Roberts' opinion. *See, e.g., Grayned v. City of Rockford,* 408 U.S. 104, 115 (1972); *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 152 (1969); *Kunz v. New York,* 340 U.S. 290, 293 (1951).

The curfew ordinance, which completely prohibits the exercise of fundamental first amendment rights in

the streets and parks and elsewhere within Schaumburg after six in the evening and before nine in the morning, regardless of any other circumstances, does precisely what the law of the public forum condemns, "in the guise of regulation" to abridge or deny the "privilege of a citizen of the United States to use the streets and parks for communication of views on national questions. . . ." *Hague v. CIO, supra* at 516.

This Court has never upheld such a blanket and sweeping ban.[30] *Jamison v. Texas, supra,* for example, after allowing that "states may provide for control of travel on their streets" and "may punish conduct on the streets which is in violation of a valid law," emphasized that

> one who is rightfully on *a street which the state has left open to the public* carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word.

Id. at 416 (emphasis added).

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[30]The Court has, on occasion, noted in dicta that the states may impose "reasonable police regulations of time and manner of distribution." *Martin v. City of Struthers,* 319 U.S. 141, 147 (1943); *see Cantwell v. Connecticut,* 310 U.S. 296, 306-07 (1939). *See also Hynes v. Mayor of Oradell,* 425 U.S. 610, 616-17, 619, 620 (1976). However, the Court has never considered on the merits a broad first amendment curfew of the kind imposed by the Schaumburg ordinance, and there is no reason to suppose that it would apply any standard to such a restrictive enactment other than that explained in detail in *Grayned v. City of Rockford,* 408 U.S. 104, 115 (1972), for "reasonable 'time, place and manner' regulations", *id.* at 115, of expressive activity in general. As discussed in the text, the Schaumburg curfew falls far short of meeting the criteria established in *Grayned* and fails as well to satisfy the less restrictive alternative test set forth in *Martin* itself.

Similarly, *Edwards v. South Carolina,* 372 U.S. 229 (1963), reversed the convictions of a group of civil rights demonstrators for breach of the peace which arose out of a peaceable assembly at the State House. Critical to the reversal was the fact that the demonstration had occurred in "periods during which the State House grounds were open to the public. . . ." *Id.* at 236.

There is no question here, of course, but that Schaumburg "has left [the streets] open to the public" after 6:00 p.m. for any lawful purpose other than charitable solicitation. Schaumburg has not purported to impose on its citizens a general six o'clock curfew, but singles out certain first amendment activities as conduct which, after that hour, is punishable by infliction of criminal penalties. This retention of use of the streets by the public for other purposes, while forbidding such use to peaceable and otherwise lawful protected expression, cannot be done consistently with the first amendment.

Assuming *arguendo* that a curfew may be adopted while the streets and parks are open to the general public, it must be narrowly tailored to further a compelling government interest. The touchstone here is *Grayned v. City of Rockford,* 408 U.S. 104 (1972). First, *Grayned* set the framework by making clear that a purported "time, place and manner" regulation of speech is overbroad and therefore facially unconstitutional "if in its reach it prohibits constitutionally protected conduct." *Id.* at 114 (footnote omitted). "The crucial question . . . is whether the ordinance sweeps within its prohibition what may not be punished under the First and Fourteenth Amendments." *Id.* at 114-15.

Grayned also supplies the tools for making this determination in a given case. Although "reasonable 'time, place and manner' regulations may be necessary to further significant governmental interests, and are permitted," *id.* at 115 (footnote omitted), the concept of "reasonableness" takes on a special coloration in this context.

> Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legislative interest. Access to the "streets, sidewalks, parks, and other similar public places . . . for the purpose of exercising [First Amendment rights] cannot constitutionally be denied broadly. . . ." Free expression "must not, in the guise of regulation, be abridged or denied."

Id. at 116-17 (footnote omitted, bracketed material and ellipses in the original).

An examination of several of the leading cases on "time, place and manner" regulations reveals that no case has sustained a blanket ban on the use of the streets such as is contained in the present ordinance, in which an irrebuttable and absolute time limitation is imposed without heed to any of the other surrounding circumstances. *Grayned* itself is an excellent illustration. There, the ordinance, while arguably affecting protected speech, referred only to the making of a "noise of diversion". Moreover, it was carefully limited in time and place to "grounds adjacent to any building in which a school . . . [was] in session. . . ." *Id.* at 107-08. Finally, the ordinance purported to apply only to certain limited circumstances, where the "noise or diversion . . . disturbs or tends to disturb the

peace or good order of such school session. . . ." *Id.* at 108.

This Court upheld this focused, narrow ordinance, but in doing so made clear that a law which trod beyond such bounds would be beyond the constitutional pale. Of the enactment before it, this Court said that

> Rockford's anti-noise ordinance goes no further than *Tinker* [*v. Des Moines Independent School District*, 393 U. S. 503 (1969)] says a municipality may go to prevent interference with its schools. It is narrowly tailored to further Rockford's compelling interest in having an undisrupted school session conducive to the students' learning, and does not unnecessarily interfere with First Amendment rights. Far from having an impermissibly broad prophylactic ordinance, Rockford punishes only conduct which disrupts or is about to disrupt normal school activities. *That decision is made, as it should be, on an individual basis, given the particular fact situation.* Peaceful picketing which does not interfere with the ordinary functioning of the school is permitted.
>
> . . .
>
> The anti-noise ordinance imposes no such restriction on expressed activity *before or after the school session*, while the student/faculty "audience" enters and leaves the school.

Id. at 119-20 (footnote omitted, emphasis added).

Thus, *Grayned* vividly demonstrates the intensive scrutiny with which the Court will view a purported "time, place and manner" regulation on speech in a classic public forum. The reasoning of Mr. Justice Marshall in *Grayned* makes apparent that the instant Schaumburg ordinance would not survive that scrutiny.

Notably, the Rockford ordinance in *Grayned* was subjected to the most exacting constitutional analysis even though as the Court pointed out it was aimed at conduct, "noise or diversion" that frequently would not enjoy any special protection at all. *Id.* at 120. The facial overbreadth analysis was required, however, even in these circumstances, because the ordinance's language potentially swept "within its prohibitions what may not be punished under the First and Fourteenth Amendments". *Id.* at 115.

To the contrary, here the punitive sanctions of the Schaumburg ordinance are aimed specifically at charitable solicitation on "public streets and ways". Schaumburg, Ill., Code §22-20 (1974). The subject of regulation is not "conduct in the shadow of the First Amendment," in which context "overbreadth scrutiny has generally been somewhat less rigid," *Broadrick v. Oklahoma,* 413 U.S. 601, 614 (1971), but rather activity which enjoys the fullest measure of first amendment protection, *see, e.g., Schneider v. New Jersey, supra.* Accordingly, if anything, this ordinance must be viewed with an even higher degree of constitutional circumspection than was the case in *Grayned.*

In any event, the present ordinance utterly fails the test set forth in *Grayned.* First, the ordinance does not purport to punish "only conduct which disrupts or is about to disrupt normal . . . activities". Rather, as noted, only presumptively peaceful and protected activities are covered. Further, a violation is not triggered "on an individualized basis, given the particular fact situation", but on precisely the opposite basis, using a blanket ban with no regard whatsoever for the facts of any given case.

Moreover, while the Rockford ordinance permitted, even during school hours, "[p]eaceful picketing which does not interfere with the ordinary functioning of a school", analogous peaceful, non-intrusive activities are precisely what is here prohibited. Finally, the *Grayned* Court was careful to note that even the anti-noise prohibition went out of effect "before or after the school session". The fact that it was only during school hours, then, where a particularly compelling nexus was present between noise and the normal functioning of school, saved the *Grayned* ordinance from overbreadth. Here, of course, only the barest hint of a connection is present between the broad time prohibition of the ordinance and the evils Schaumburg purports to prevent. The Schaumburg ordinance is in sum exactly the kind of "impermissibly broad prophylactic ordinance" condemned by the first amendment.

Other leading "time, place and manner" decisions are completely in accord with the *Grayned* analysis and similarly require invalidation of the ordinance. In *Cameron v. Johnson,* 390 U.S. 611 (1968), for example, the Mississippi statute, while concededly reaching "picketing . . . intertwined with expression and association", narrowly proscribed such picketing only "if engaged in a manner which obstructs or unreasonably interferes with ingress or egress to or from a courthouse". *Id.* at 617. That statute, therefore, did not prohibit any " 'activity [which] bears [a] necessary relationship to the freedom to . . . distribute information or opinion.' *Schneider v. State,* [*supra* at 161]." Again, quite the contrary obtains here.

Similarly, the judicial obstruction statute upheld by *Cox v. Louisiana,* 379 U.S. 559 (1965), was a "precise,

narrowly drawn regulatory statute which proscribes certain specific behavior". *Id.* at 562. No conviction could be had under the Louisiana law unless it was found, for example, that the defendant acted "with the intent of interfering with, obstructing, or impeding the administration of justice". *Id.* at 560. Again, the Court emphasized that it was not dealing with "a pure form of expression", such as solicitation, for example, "but with expression mixed with particular conduct". *Id.* at 564 (emphasis supplied).[31]

Moreover, the curfew cannot be upheld on the ground that, while prohibiting absolutely any canvassing or soliciting fifteen hours a day, six days a week, such activity is permitted at other times. The law has long been stated by *Schneider v. New Jersey, supra* at 163, that

> the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty in appropriate places abridged on the plea that it may be exercised in some other place.

Accord, e.g., Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 556 (1975). There is no reason in logic or doctrine for this principle, so clearly applicable to the "place" component of the "time, place and manner" equation, not to apply equally to the

[31]The Schaumburg ordinance resembles the law held unconstitutional by *Davis v. Francois,* 395 F.2d 730 (5th Cir. 1968), which prohibited, *inter alia,* picketing by more than two people on streets and sidewalks. The present enactment does not pertain to a permissible "isolation of a legitimate governmental interest". *Id.* at 635 (footnote omitted). Like the ordinance invalidated in *Davis,* "it extends to all kinds of facilities in the [Village] though each may present different considerations". *Id.* at 735.

coordinate factor of "time", particularly where use of the public streets themselves is at issue.[32]

Thus, the blanket curfew is plainly unconstitutional. Even the door-to-door aspect of the curfew is by itself an overbroad and gratuitous restriction on expression. *Martin v. City of Struthers,* 319 U.S. 141 (1943), made clear that a regulation of first amendment protected activities carried out by calling upon householders, is "unreasonable" as a matter of law if there exists a less restrictive alternative which substantially vindicates the government's legitimate interests in exacting such a regulation. *Martin* involved an ordinance which generally prohibited door-to-door distribution and solicitation. *Id.* at 142. Following the Court's remarks concerning "reasonable . . . regulations of time and manner," the Court noted that

> [t]he dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden

[32]The inclusion of the entire day of Sunday within the curfew is by itself an unjustifiable restriction on expression. The commonly asserted justifications for a curfew are prevention of crime and of annoyance. Whatever the factual basis for the belief that solicitations are more likely to facilitate crime and to cause annoyance at night rather than by day, *but cf. Martin v. Struthers,* 319 U.S. 141 (1943) (door-to-door solicitation upheld against restrictive ordinance in factory community in which many workers slept by day), neither crime nor annoyance are more likely to occur on Sunday than on any other day. Nor is solicitation a commercial activity, which the state may regulate in an effort to make Sunday a day of uniform quiet and repose. *McGowan v. Maryland,* 366 U.S. 420 (1961). On the contrary, if the solicitation is itself religious in nature or even if it is merely conducted by a church for a charitable end, Sunday is the most appropriate day conceivable for it to be made.

> by the Constitution, the naked restriction of the dissemination of ideas.

Id. at 147.

Justice Black then pointed out the wide scope of the Struthers ordinance which made "a person a criminal trespasser if he enters the property of another for an innocent purpose without an explicit command from the owners to stay away". *Id.* at 148 (footnote omitted). A clearly less restrictive alternative was available by which the city's interest could be achieved, by making it "an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed". *Id. See* Stone, *Fora Americana: Speech in Public Places,* 1974 Sup. Ct. Rev. 233, 264-65. *Compare Rowan v. Post Office Department,* 397 U.S. 728 (1970) (statute permitting householder to prohibit future mailings of erotic literature held valid where burden of acting was upon the individual recipient to foreclose communication) *with Lamont v. Postmaster General,* 381 U.S. 101 (1965) (statute putting burden on addressee affirmatively to request delivery of communist literature impeded delivery even to a willing recipient).

Thus, in *Martin* the legitimate interests of the city could easily be served without the sweeping prohibitions imposed by the ordinance at issue.

> A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers.

Martin v. Struthers, supra at 148 (footnote omitted).[33] *See Cantwell v. Connecticut, supra* at 306.

Even as to door-to-door activity, the full force of *Martin's* less restrictive alternative analysis is applicable to the purported "time" regulation of the Schaumburg ordinance. The very alternative proposed by *Martin* remains available to Schaumburg, and thus *Martin* mandates that it or some analogous provision be employed if Schaumburg wishes to legislate in this area. Therefore the curfew imposed by Schaumburg, no less than the prohibition of the Struthers ordinance, unnecessarily restricts door-to-door campaigns within the village limits.

The applicability of the *Martin* alternative is especially clear in the context of the Schaumburg law, for the second sentence of §22-24 of the ordinance, immediately following the curfew provision, is itself a rather close approximation of Justice Black's proposal in *Martin*. "Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating 'no solicitors or peddlers invited.' " Plainly then, Schaumburg is quite capable of drafting an ordinance which protects its legitimate interest while remaining less restrictive of first amendment rights than the severe curfew provided for in the same section of the ordinance.

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[33]As has been noted, the curfew imposed by the Schaumburg ordinance applies to solicitations made by the "use of the public streets and public ways." Schaumburg, Ill., Code §22-20 (1974), as well as those made door-to-door. The second of the two alternatives mentioned in *Martin* is applicable in the former context as well.

D. The Requirement of a Statement of Compliance With the Illinois Charitable Solicitation Act in Order to Obtain a Permit Completely Bars Organizations Exempt From That Act From Soliciting Within Schaumburg and Consequently Violates the First Amendment.

Schaumburg, Ill., Code §22-20(e)(1974) requires that as a condition of obtaining a permit to solicit charitable contributions within the village an applicant provide

> [a] written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

However, the state statute expressly exempts from its operation religious organizations. *See Citizens for a Better Environment v. Village of Schaumburg,* 590 F.2d 220, 244, n.5 (7th Cir. 1978). Thus, a religious organization as recognized by the state literally cannot comply with the permit requirement if Schaumburg chooses to treat its solicitation as charitable, as indeed has occurred with respect to the Unification Church.

The Illinois charitable solicitation act provides for an exemption of a religious organization through the filing of an initial statement with the Attorney General and a determination by him that its purposes are "actual and genuine" and notification of that decision. From the moment of that notification the act does "not apply to a corporation sole or other religious corporation, trust or organization incorporated or established for religious purposes". Ill. Ann.Stat., ch. 23, §5103(a) (1968) (Solicitation of Funds for Charitable Purposes,

Laws 1963, p. 2082, §2). Schaumburg thus requires a statement of recent date of compliance with a statute which does not apply to a church as a precondition for soliciting contributions.

If onerous prior restraints and restrictions on religious and other protected solicitation are unconstitutional, impossible ones necessarily are. Schaumburg's failure to follow the lead of the state and to plainly exempt religious solicitation from the operation of the ordinance necessitates that this provision be declared unconstitutional as applied to a church.

CONCLUSION.

Accordingly, and for the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

DATED: July 21, 1979.

Respectfully submitted,

BARRY A. FISHER
LARRY J. ROBERTS
DAVID GROSZ
ROBERT C. MOEST
SUSAN L. CARROLL

Attorneys for Holy Spirit Association for the Unification of World Christianity.

APPENDIX A.

AMENDMENTS TO UNITED STATES CONSTITUTION.

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Schaumburg Village Code, Chapter 22, Article III.

Article III. Charitable Organizations.

Sec. 22-19. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

Charitable organization. Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose,

Contribution. The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature. (Ord. No. 1052, § 2.)

Sec. 22-20. Permits—Required; contents of application.

Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The name and address of the person in charge of solicitation in the village.

(c) The names and addresses of all the persons who will solicit contributions in the village.

(d) The dates and times of day such solicitations are to be made and the geographic area within the village wherein such solicitation shall be conducted at a particular time and day.

(e) A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

(f) Satisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).

(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purposes of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

Sec. 22-21. Same—Submission and verification of applications; issuance.

All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates

and times at which solicitation may take place. (Ord. No. 1052, § 7.)

Sec. 22-22. Same—Fee.

Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of ten dollars. (Ord. No. 1052, § 6.)

Sec. 22.23. Indicted or convicted felons as solicitors.

It shall be unlawful for any charitable organization to utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony. (Ord. No. 1052, § 5.)

Sec. 22-24. Hours; entering premises posted for "no soliciting."

No permit issued under the provisions of this article shall permit solicitation before the hour of 9:00 A.M. and after the hour of 6:00 P.M., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "no solicitors or peddlers invited." (Ord. No. 1052, § 4.)

APPENDIX B.

Webster's Third New International Dictionary definitions of terms used in Schaumburg, Ill., Code §22-19 (1974) and related words:[1]

be·nev·o·lence |be'nevelen(t)s| n -s [ME, fr. L benevolentia, fr. benevolent-, benevolens + -ia] 1 : benevolent feeling : kindly disposition to do good and promote the welfare of others : goodwill (we shook hands and I again glowed with ~ to my fellow men —Richard Aldington) 2 archaic : personal regard or affection (his dislike of application and control prevented his acquiring the ~ of his superiors —James Mill) 3 : an expression of benevolence: a : an act of kindness b : a generous gift 4 : a compulsory contribution or tax formerly levied by certain English kings with no other authority than the claim of prerogative

[p. 204]

be·nev·o·lent |-lent| adj [ME, fr. L benevolent-, benevolens, fr. bene well + volent-, volens, pres. part. of velle to will, wish — more at will] 1 : marked by a kindly disposition to promote the happiness and prosperity of others or by generosity in and pleasure at doing good works (a ~ donor) 2 : marked by or suggestive of goodwill or benign feelings : lacking any hostility (a ~ judge) (a ~ smile) 3 : arising from or prompted by motives of charity or a sense of benevolence : philanthropic (a ~ society) — be·nev·o·lent·ly adv —be·nev·o·lent·ness n -es

[p. 204]

char·i·ta·ble |'chared·ebel, -reteb- also -er-| adj [ME, fr. MF, fr. OF, fr. charite charity + -ite -ity — more at charity] 1 : exhibiting the virtue of Christian love : full of love and goodwill for others : benevolent, kindly 2 a :

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[1]Pronunciations and some diacritical marks are not reproduced.

practicing or showing charity : generous in assistance to the poor (a man ~ to all in need) b : of, for, or relating to charity (~ gifts) : having the quality of charity (a ~ impulse) (money spent for ~ purposes) : administering charity (~ institutions) 3 : liberal in judging others : inclined to look on the best side and to avoid harsh judgment (it is more ~ to suspend judgment — Ellen Glasgow) : arising from or dictated by kindness (a ~ interpretation of his actions) — char·i·table·ness |-belnes| n -es — char·i·ta·bly |-eble, -li| adv

[p. 378]

charitable trust n : a trust set up for the benefit for the public usu. setting out a definite charitable purpose for an undetermined number of beneficiaries

[p. 378]

char·i·tar·i·an |....tereen| n -s [charity + -arian (as in humanitarian)] : a charitable person : one that aids or supports charitable enterprises

[p. 378]

char·i·ty |'chared·e, ete, -i also -er-| n -es often attrib [ME charate, fr. OF charate, fr. LL caritat-, caritas Christian love, fr. L, costliness, high regard, love, fr. carus dear, costly, loved + -itat-, -itas -ity akin to OIr caraim I love, Skt kama love, desire] 1 : Christian love: a : the virtue or act of loving God with a love which transcends that for creatures and of loving others for the sake of God b : divine love for man : love in its perfection c : the act of loving or the disposition to love all men as brothers because they are sons of God : love of fellow men 2 a : the kindly and sympathetic disposition to aid the needy or suffering : liberality to the poor, to benevolent institution, or to worthy causes (the ~ of the neighbors was exhausted and there was no more food in the house — Vicki Baum) b : an act or series of acts of aid to the needy (performed many charities among her neighbors) c : whatever is given to the needy or suffering for their relief : Alms (give her a ~) d : an organization or institution engaged in the free assistance of the poor, the suffering, or the distressed (a list of deserving charities) e : public provision for the care or relief of the needy (too proud to accept ~) f : the recipient of charitable assistance (he is one of my father's charities) 3 a(1) : love or affection for others: a disposition to good will, kindliness, and sympathy (no one minded him laughing at them when they saw the endless ~ of his eyes —Mary Webb) (2) : an act or instance of good will or affection b : an eleemosynary gift : a gift (as by grant or devise) of real or personal property to the use of the public or any portion of it as distinct from specific individuals for any beneficial or salutary purpose c : an institution (as a hospital, library, or school) founded by a gift and intended for the use of the public 4 : as disposition to liberal lenient tolerant judgment and toward minimizing shortcomings and putting the best possible construction on the characteristics or actions of others (a kindly critic liked for his ~ and moderation) 5 : a refreshment dispensed between meals in a monastery 6 : Jacob's Ladder 1 a 7 : charity stamp syn see mercy

[p. 378]

el·ee·mos·y·nar |ele'masene(r) also -le(e)'m- sometimes -azen-| n -s [ML eleemosynarius, fr. LL eleemosyna alms + L -arius -ary, -ar (n. suffix) — more at alms] : one that distributes charity or doles out relief : almoner

[p. 733]

el·ee·mos·y·nary |-en,ere, -ri| adj [ML eleemosynarius, fr. LL eleemosyna + L -arius -ary (adj. suffix)] 1 : of or relating to charity : charitable, philanthropic (a rich man given to many ~ activities) (~ relief) 2 a : nonprofit and receiving all or a great part of sustaining funds from donations or gifts (about 90 percent of the hospitals are of a governmental, charitable, or ~ and non-

profit character —U.S. Code) (churches, lodges, and other ~ institutions —Sat. Eve. Post) b : provided by an institution of this nature (an ~ education)

[p. 733]

eleemosynary corporation n : a corporation organized for charitable purposes — contrasted with civil corporation

[p. 733]

[2]non·profit |(') .... +| adj [non- + profit, n.] 1 : not conducted or maintained for the purpose of making a profit (a ~ agency supported by endowments and private contributions — Current Biog.) 2 : not based on the profit motive : not organized on capitalistic principles : socialist (decreed the creation of a ~ society —Time)

[p. 1538]

pa·tri·ot |'pa·treet, -e,at, usu Brit 'pa··; usu -d·+V| n -s often attrib [MF patriote, fr. LL patriota, fr. Gk patriotes, fr. patrios of one's father, of or characteristic of one's forefathers, fr. patr-, pater father — more at father] 1 obs : a fellow countryman : compatriot 2 a : a person who loves his country and defends and promotes its interests; esp : a soldier who fights for love of country b : an enthusiast for a cause other than national (the South's cotton ~s —Time) 3 obs : lover, amateur 4 a usu cap : an English parliamentary faction opposed to Sir Robert Walpole esp. from 1732-1742 b : one who advocates or promotes the independence of his native soil or people from the country or union of countries of which it is a part (as a colony) (immortalized by the illustrious appellation of the ~ army —George Washington) (a band of fiery ~s —D. G. Haring) c : patrioteer (the

[2]This term is closest in meaning to "not-for-profit" which is the precise term used in the ordinance, but which is not defined by the dictionary.

most bloodthirsty ~s in the safest swivel chairs —Walter Lippmann) 5 a : one who remains loyal to his country when it is occupied by an enemy b : a member of a resistance group.

[p. 1656]

pa·tri·ot·ic | pa·tre ad·|ik, -at|, |ek, sometimes & Brit usu ,pa··| also pa·tri·ot·i·cal | |ekel, |ek-| adj [patriot + -ic, -ical] : inspired by patriotism : befitting or characteristic of a patriot : actuated by love of one's country : devoted to one's country (a ~ statesman) (stirring ~ exercises —Springfiled (Mass.) Union) — pa·tri·ot·i·cal·ly | |ek(e)le, |ek-, -li| adv

[p. 1656]

phil·an·throp·ic |....thrapik, pek| also phil·an·throp·i·cal |-pekel, -pek-| adj [philanthropic fr. F philanthropique, fr. Gk philanthropos + F -ique -ic; philanthropical fr. philanthropy + -ical] 1 : of, relating to, or characterized by philanthropy : benevolent, humanitarian (~ sympathy for the cause of the slave —V. L. Parrington) (found time to devote to church, civic, and ~ affairs —Marian Silveus) 2 : dispensing or receiving aid from funds set aside for humanitarian purposes : eleemosynary (~ foundation) (the need for books at nearby hospitals and ~ homes —Wonderful World of Books) — phil·an·throp·i·cal·ly |-pek(e)le, -pek-, -li|adv

[p. 1697]

phi·lan·thro·pism |fe'lan(t)thre, pizem, -laan-| n -s [philanthropy + -ism] : philanthropy

[p. 1697]

phi·lan·thro·pist |-pest| n -s [philanthropy + -ist] : one characterized by or practicing philanthropy : altruist, humanitarian — phi·lan·thro·pis·tic |.....pistik| adj

[p. 1697]

phi·lan·thro·py |fe'lan(t)threpe, -iaan-, -pi| n -es [LL philanthropia, fr. Gk philanthropia, fr. philanthropos loving mankind (fr. phil- + anthropos man) + -ia -y — more at anthrop-] 1 : goodwill toward one's fellowmen esp. as expressed through active efforts to promote human welfare : humanitarianism (~ . . . is civic, social, and amply beneficial —J. A. Franquiz) — contrasted with misanthopy 2 a : an act or instance of deliberative generosity : a contribution made in a spirit of humanitarianism (among his philanthopies were full tuition scholarships for deserving students) b (1) : an organization distributing funds for humanitarian purposes (funds for the new rehabilitation center came from two of the big philanthropies) (2) : an institution or agency supported by such contributions (community chest funds are distributed among various philanthropies)

[p. 1697]

MOTION FILED
JUL 20 1979

Supreme Court of the United States

October Term, 1978
No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Motion for Leave to File Brief Amicus Curiae on Behalf of Los Angeles Council of National Voluntary Health Agencies; and Brief Amicus Curiae of Los Angeles Council of National Voluntary Health Agencies.

ARNOLD H. GOLD,
PACHTER, GOLD & SCHAFFER,
6420 Wilshire Boulevard, 6th Floor
Los Angeles, California 90048
(213) 658-6800
Attorney for Amicus Curiae.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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The Amicus Curiae.

Los Angeles Council of National Voluntary Health Agencies, a nonprofit association the members of which are 27 Los Angeles County affiliates of national health charities.

IN THE

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Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Motion for Leave to File Brief Amicus Curiae.

On behalf of Los Angeles Council of National Voluntary Health Agencies (the "Los Angeles Council"), leave is hereby requested to file the attached brief *amicus curiae* in the above-captioned action, in support of the respondents. The attorney for the respondents has consented to the filing of the attached brief. The consent of the attorney for the petitioner was requested but refused.

The Los Angeles Council is a nonprofit association the members of which are 27 affiliates of national health charities. The members of the Los Angeles Council all operate in, and engage in fund raising activities in, Los Angeles County, California.

The direct and immediate interest of the Los Angeles Council in this case arises from the following facts:

1. With respect to charitable fund raising, the County of Los Angeles is the most active area in the nation insofar as the number of charities, insofar as the amount of funds raised for charity, and insofar as the number of municipalities regulating charity. In 1978, 2798 charities raised more than $113 million in the City of Los Angeles alone; and the City of Los Angeles is just one (albeit by far the largest, of course) of 79 municipalities in Los Angeles County.

2. Of these 79 municipalities, roughly 35 have ordinances regulating fund raising by charities. These 35 or so ordinances impose upon a charity seeking to solicit funds on a county-wide basis a maze of requirements which vary widely (and often conflict) from municipality to municipality. Taken together, these ordinances impose an incredible burden on a charity seeking to solicit county-wide and themselves greatly add to the charity's administrative expenses.

3. The municipal ordinances extant in Los Angeles County presently are, by and large, "disclosure"-type ordinances of the sort recommended by the Commission on Private Philanthropy and Public Needs.[a] However, since these ordinances are constantly being revised and updated, it is clear that a decision of this Honorable Court validating a percentage-limitation ordinance of the sort involved in the case at bar would very soon result in the amendment of a myriad of ordinances in Los Angeles County to include percentage limita-

[a]COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS, REPORT—GIVING IN AMERICA—TOWARD A STRONGER VOLUNTARY SECTOR 162-166 (U. S. Treasury Dept. 1975).

tions, thereby subjecting the members of the Los Angeles Council (and the other charities which solicit beyond the boundaries of a single city) to a geometric increase in the impact of municipal fund-raising ordinances. In fact, many charities performing clearly beneficial functions simply will be unable to solicit funds in certain parts of Los Angeles County.

4. Accordingly, a decision of this Honorable Court upholding the ordinance involved in the case at bar would have a uniquely severe impact on charitable activities in Los Angeles County—where the members of the Los Angeles Council operate; and the Los Angeles Council has unique expertise to lend to this Honorable Court in the case at bar.[b]

As was true of The Coalition of National Voluntary Organizations and certain of its members (who have submitted a brief *amicus curiae* in the case at bar), the Los Angeles Council's desire to submit a brief separate from the respondent's brief herein is based upon the fact that the Los Angeles Council has as its members a broad spectrum of organizations insofar as size, age, fund raising methods and type of program are concerned, while the respondents herein represent only

[b]The attorney for the Los Angeles Council also has particular expertise concerning the questions presented by the case at bar, having authored the chapter on "Relations with Government" of the California State Bar's Handbook on California Nonprofit Corporations (California Continuing Education of the Bar, 1969), having drafted portions of the charitable solicitation provisions of the Municipal Code of the City of Los Angeles, having served as a consultant to the City of Santa Monica, California concerning its charitable solicitation ordinance, having served as a member of the California Attorney General's Task Force on Charitable Solicitation Legislation, having served as a member of the California Attorney General's Committee on Charitable Reporting Standards and having lectured extensively as a member of California State Bar panels on nonprofit corporations.

one type of organization subject to government regulation of fund raising. Since the Schaumburg ordinance and other percentage-limitation ordinances affect organizations of many types different from the respondent organization and have implications on fund raising activities in addition to door-to-door solicitation, the Los Angeles Council seeks to bring a broader point of view before this Honorable Court.

The brief *amicus curiae* which the Los Angeles Council seeks leave to file will not duplicate the arguments set forth in the aforementioned brief *amicus curiae* submitted by The Coalition of National Voluntary Organizations and certain of its members. Rather, the Los Angeles Council's brief will (1) give specific illustrations of the unreasonableness of the limitation on charities' First Amendment rights posed by the Schaumburg ordinance and (2) argue that the donor's First Amendment rights are unreasonably infringed by Schaumburg-type ordinances.

In addition to requesting permission to file a brief *amicus curiae*, the Los Angeles Council also requests permission for its attorney to participate in oral argument.

ARNOLD H. GOLD,
PACHTER, GOLD & SCHAFFER,
Attorney for Amicus Curiae.

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Respondents.

Brief of Amicus Curiae.

This brief *amicus curiae* is submitted by Los Angeles Council of National Voluntary Health Agencies on the side of and in support of respondents.

Interest of the Amicus Curiae.

The *amicus curiae* is a nonprofit association the members of which are 27 affiliates of national health charities. The members of the *amicus curiae* all operate in, and engage in fund raising activities in, Los Angeles County, California.

With respect to charitable fund raising, the County of Los Angeles is the most active area in this nation—insofar as the number of charities, insofar as the amount of funds raised for charity, and insofar as the number of municipalities regulating charity. In 1978, 2798 charities raised more than $113 million in the City of Los Angeles alone; and the City of Los Angeles

is just one (albeit by far the largest, of course) of 79 municipalities in Los Angeles County. Approximately 35 of these municipalities have ordinances regulating fund raising by charities. These 35 or so ordinances impose upon a charity seeking to solicit funds on a county-wide basis a maze of requirements which vary widely (and often conflict) from municipality to municipality. Taken together, these ordinances impose an incredible burden on a charity seeking to solicit county-wide and themselves greatly add to the charity's administrative expenses.

The municipal ordinances extant in Los Angeles County presently are, by and large, "disclosure"-type ordinances of the sort recommended by the Commission on Private Philanthropy and Public Needs.[1] However, since these ordinances are constantly being revised and updated, it is clear that a decision of this Honorable Court validating a percentage-limitation ordinance of the sort involved in the case at bar would very soon result in the amendment of a myriad of ordinances in Los Angeles County to include percentage limitations, subjecting the members of the Los Angeles Council (and the other charities which solicit beyond the boundaries of a single city) to a geometric increase in the impact of municipal fund-raising ordinances.

[1]COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS, REPORT—GIVING IN AMERICA—TOWARD A STRONGER VOLUNTARY SECTOR 162-166 (U. S. Treasury Dept. 1975). The City of Los Angeles ordinance, quoted in *Rescue Army v. Municipal Court*, 331 U.S. 549, 554-564 (1947), has served as a model for "disclosure"-type ordinances throughout the nation.

In fact, many charities performing clearly beneficial functions simply will be unable to solicit funds in certain parts of Los Angeles County.

Accordingly, a decision of this Honorable Court upholding the ordinance involved in the case at bar would have a particularly severe impact on charitable activities in Los Angeles County—where the members of the *amicus curiae* operate.

The particular interest of the *amicus curiae* in submitting a statement of position separate from the respondents herein is that the *amicus curiae* has as its members a broad spectrum of organizations insofar as size, age, fund raising methods and type of program are concerned, while the respondents herein represent only one type of organization subject to government regulation of fund raising. Since the Schamburg ordinance and other percentage limitation ordinances affect organizations of many types different from the respondent organization and have implications on fund raising activities in addition to door-to-door solicitation, the *amicus curiae* seeks to bring a broader point of view before this Honorable Court.

The within brief does not duplicate the arguments set forth in the brief *amicus curiae* submitted by The Coalition of National Voluntary Organizations and certain of its members. While the Los Angeles Council of Voluntary Health Agencies joins in the arguments set forth in the latter brief, the Los Angeles Council submits the following additional arguments for consideration by this Honorable Court.

ARGUMENT.

1. In Determining the Reasonableness of a Restraint on First Amendment Rights, Whether It Is so Broad as to Unnecessarily Obstruct Beneficial Activities Is a Critical Factor; the Schaumburg Ordinance Fails This Test.

A devastating earthquake has just occurred in Guatemala. Tens of thousands of people are left without shelter. Famine and pestilence abound. The food supply will last for only three days in most localities, and medical supplies are grossly inadequate to meet the needs of the injured. If help comes within two weeks, thousands of lives will be saved—the lives of people who will die if help comes in three weeks rather than two. Funds to purchase and fly in food and medical supplies must be raised *immediately*. The National Alliance of Guatemalan-American Social Clubs mobilizes and conducts an emergency public appeal for funds, using volunteers to send telegrams and place telephone calls across the United States and using a mix of volunteers and paid solicitors to solicit door-to-door. At a total cost of $200,000, this emergency appeal raises $500,000 within a week; and the $300,000.00 net proceeds are used to buy and fly to the devastated areas food and medical supplies which save 5,000 lives. The National Alliance could not solicit door-to-door in the Village of Schaumburg as a part of its emergency appeal.

Gray's Syndrome, a crippling disease attacking children from birth to age 5, is little known but afflicts an increasing number of victims. Virtually no research has been done on the disease. Fifteen parents of Gray's Syndrome children in Cook County, Illinois form Charity A to raise money for postgraduate fellowships for

medical research into the prevention and cure of the disease. Charity A contemplates raising $15,000.00 per year through door-to-door solicitations, at an annual cost of $3,000.00 for postage, printing, telephone, shared office rental and the salary of a secretary/bookkeeper eight hours per week. However, during its first year of operations it will be necessary for Charity A to spend an extra $1,000.00 of its revenues on a desk, a chair, a typewriter, an initial supply of printed material (estimated to last 3 years) and a security deposit on the office lease. During its first year of operations, Charity A cannot solicit door-to-door in the Village of Schaumburg.

In May of 1973, and during each May of the preceding 35 years, through door-to-door solicitation in Schaumburg, the Mothers' Club of Schaumburg High School has raised $1,500.00 for college scholarships to be awarded each June to promising needy graduating seniors from Schaumburg High. It had no fund raising or administrative expenses whatsoever until 1974 when, in order to comply with subsections (e) and (f) of Section 22-20 in newly enacted Article III of Chapter 22 of the Schaumburg Village Code, it needed to hire an attorney to take the one-time-only steps necessary to obtain the statement of compliance with Illinois charitable solicitation statutes and proof of tax exempt status under United States Internal Revenue Code Section 501(c)(3) required by said subsections (e) and (f). The attorney for the Mothers' Club is willing to perform the necessary services at a reasonable fee: $500.00, payable out of the proceeds to be raised in the year in which the services are performed. The Mothers' Club could not solicit door-to-door in Schaumburg in 1974, and in fact can never

solicit door-to-door in Schaumburg since it will never be permitted to raise the funds it needs to pay its attorney to comply with the Village Code's conditions precedent to raising funds.

Charity B and Charity C are Cook County affiliates of major national health charities. Each concentrates on a different disease. Each conducts an outstanding program of medical research and public education concerning its particular disease. Each raises $750,000.00 annually. Charity B solicits by person-to-person contact and in the course thereof uses 15,000 hours of volunteer time annually (much of which would otherwise be devoted to service to other charities) but spends only $185,000.00 per year on fund raising and "administrative" costs. Charity C primarily uses direct mail solicitation to raise funds—a fund raising approach which is quite effective but generally costs more money per dollar raised than person-to-person solicitation. However, Charity C uses substantially no volunteer time in fund raising. Because of its direct mail approach, Charity C's annual fund raising and "administrative" costs total $190,000.00. Charity B, which uses up 15,000 hours of volunteer time to save $5,000.00 in costs, can solicit door-to-door in the Village of Schaumburg. Charity C cannot.

Charity D has as its goal crime prevention. It routinely sends off-duty police officers door-to-door to distribute educational material and to review a brief household security checklist with the resident's occupants. It spends sixty percent of its funds on reasonable compensation of these police officers for the time they spend on the charity's behalf. By reason of Charity D's efforts, the household burglary rates drop drastically in each locale in which Charity D operates. Although

Charity D can conduct its educational activities door-to-door in the Village of Schaumburg, it cannot solicit funds during these door-to-door visits no matter how low-key the solicitation.

The foregoing are fictional but frequently encountered examples of clearly beneficial charitable activities involving perfectly appropriate, reasonable and common (under the circumstances) fund raising and "administrative" (as defined by the Schaumburg ordinance) expenses. Yet in each case the charity would be prohibited from soliciting door-to-door in the Village of Schaumburg.

One of the principal flaws in the Schaumburg ordinance is that it proceeds upon the assumption that there is a necessary reverse correlation between the fund raising and "administrative" expenses of a charity and its benefits to society. As the foregoing examples demonstrate, no such necessary correlation exists. Beneficial charitable activities may entail fund raising or "administrative" expenses higher than any arbitrary percentage because of the emergency nature of the need, because of the newness of the charity, because the charity elects to use volunteer time sparingly (saving it for other charities) by using a slightly more expensive (in terms of dollars but not in terms of volunteer time) method of fund raising, because the charity's program contemplates the dissemination of beneficial information through salaried personnel, or because of a myriad of other reasons in no way indicating that the charity is "unworthy."

In determining whether a restraint imposed on the exercise of First Amendment rights is reasonable, a critical factor is whether it is so broad as to unneces-

sarily obstruct beneficial activities. *Cantwell v. Connecticut,* 310 U.S. 296, 304 (1940); *Schneider v. State,* 308 U.S. 147, 161-162, 164 (1939). This factor requires invalidation of the Schaumburg ordinance:

A. As illustrated above, the Schaumburg ordinance clearly obstructs charities whose activities are beneficial notwithstanding their "more-than-25%" expenses.

B. Notwithstanding the argument at page 9 of Petitioner's Brief that the public needs protection from "fraud, crime and undue annoyance by door-to-door solicitation on private property" by non-charities masquerading as charities, there are other, more direct ways of affording such protection to the public—ways which do not unreasonably obstruct the organization whose activities are truly beneficial:

> "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." *Cantwell v. Connecticut,* 310 U.S. 296, 306 (1940).

Or,

> "Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than [other means], the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." *Schneider v. State,* 308 U.S. 147, 164 (1939).

C. The test is one of balancing. *Martin v. Struthers,* 319 U.S. 141, 143 (1943). It is respectfully submitted that when the existence of numerous more direct ways of protecting the public is taken into consideration, the scale clearly tips in favor of the right of free expression and against the constitutionality of the ordinance in question.

2. The Schaumburg Ordinance Unconstitutionally Abridges the Donor's Rights of Free Expression.

The Petitioner's Brief discusses the case at bar as though it involved only the First Amendment rights of *charities.* The First Amendment rights of the *persons solicited* are also obstructed by the Schaumburg ordinance.

The First Amendment, of course, protects the right to *know. Martin v. Struthers,* 319 U.S. 141, 143 (1943); and other cases collected in *Minarcini v. Strongsville City School District,* 541 F.2d 577, 583 (6th Cir. 1976). The following observation by Mr. Justice Black in the *Martin* case applies with equal vigor to the case at bar:

> "We are faced in the instant case with the necessity of weighing the conflicting interests of the Appellant in the civil rights she claims, *as well as the right of the individual householder to determine whether he is willing to receive her message,* against the interest of the community which by this ordinance offers to protect the interests of all of its citizens, whether particular citizens want that protection or not." [Emphasis added.] *Martin v. Struthers,* 319 U.S. 141, 143 (1943).

The right of the individual householder in the Village of Schaumburg *to decide whether to receive the message*

of the solicitors of the Citizens for a Better Environment ("CBE") must be taken into consideration in performing the balancing test discussed in Point 1, *supra.*

Likewise, the right of the individual householder in the Village of Schaumburg, once he has decided to hear CBE's message, *to decide to contribute* to CBE must also be taken into consideration in performing that balancing test. If a solicitor wearing a sandwich board approaches a prospective donor, the sandwich board proclaiming in letters six inches high that the solicitor's charity spends on fund raising and administrative costs 90% of every dollar collected, and if the solicitor further discloses to the prospective donor not only what the charity's beneficial activities are but also all other information required to assure an enlightened decision by the prospective donor as to whether or not to donate, *the prospective donor has the right to make that decision*— including the right to donate if he feels that the use to which the remaining 10% will be put fulfills a need so critical that using up 90% on fund raising and administrative costs is justified—and the State has insufficient justification for depriving the prospective donor of that right.

In summary, it is respectfully submitted that in testing percentage limitation ordinances, the following four factors taken together far outweigh the public's need for protection against fraud, crime and undue annoyance:

(a) The existence of many other, more direct, means of providing that protection;

(b) The charity's rights of free expression;

(c) The individual householder's right to know—to decide whether to receive the charity's message; and

(d) The individual householder's right to decide to contribute.

Conclusion.

For the reasons stated above and in the briefs of Respondent and the other *amici curiae,* the Schaumburg ordinance is unconstitutional on its face. The judgment of the courts below should therefore be affirmed.

Respectfully submitted,

ARNOLD H. GOLD,
PACHTER, GOLD & SCHAFFER,
Attorney for Amicus Curiae.

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On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE ON BEHALF OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS AND THE LUTHERAN COUNCIL IN THE U.S.A.

SANFORD JAY ROSEN
ROBIN B. JOHANSEN
ROSEN, REMCHO & HENDERSON
155 Montgomery Street, Suite 1502
San Francisco, California 94104
(415) 433-6830

Attorneys for the Amici Curiae

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-1335

VILLAGE OF SCHAUMBURG, et al.,

Petitioners,

v.

CITIZENS FOR A BETTER ENVIRONMENT, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS AND THE LUTHERAN COUNCIL IN THE U.S.A.

The National Council of Churches of Christ in the U.S.A., the Lutheran Council in the U.S.A., and the Baptist

Joint Committee on Public Affairs hereby request leave to file the attached brief amicus curiae in the above-captioned case. The attorney for the respondents has consented to the filing of the attached brief. The consent of the attorneys for the petitioners Village of Schaumburg, et al., was requested but refused. Letters containing respondents' consent and petitioners' refusal have been forwarded to the Court.

INTEREST OF THE AMICI

The organizations requesting leave to file this brief amicus curiae represent major religious groups in the United States. Increasingly, these religious organizations find themselves confronted with statutes or ordinances similar to the Schaumburg ordinance. Many of the ordinances fail to state whether they include solicitation by religious organizations. Some cover only certain types of religious organizations. Others regulate only certain types of fundraising conducted by religious bodies, depending upon the purpose for which the funds will be used. The cumulative burden of these confusing and conflicting regulations has had a crippling effect on religious fundraising in violation of both the Religion and Free Speech Clauses of the First Amendment.

These religious organizations have a particular interest in filing a separate brief because of the special protections afforded them under the Religion Clauses of the First Amendment. Respondents and the other amici curiae supporting them represent primarily secular organizations. Thus, the other amici focus their arguments on the Free Speech clause of the First Amendment. They do not address the special problems of entanglement and interference with religious freedom that these amici seek to bring to the Court's attention.

This brief amicus curiae is filed on behalf of the following religious organizations:

The National Council of Churches of Christ in the U.S.A. is a cooperative agency of thirty-two national Christian religious bodies having an aggregate membership of over forty million. The National Council of Churches is organized exclusively for religious purposes, and by its certificate of incorporation is committed "to promote the application of the law of Christ in every relation of life."

On November 2, 1978, the Governing Board of the National Council of Churches adopted a resolution on "Regulations of Charitable Solicitations" which expressed opposition to solicitation statutes if they did not exempt churches from the necessity to report

to civil officials their income, expenditures, major contributions and chief officers, which the Board considered to be an infringement upon the free exercise of religion.

The Baptist Joint Committee On Public Affairs consists of representatives elected by each of eight cooperating Baptist conventions of the United States: the American Baptist Churches in the U.S.A., the Baptist General Conference, the National Baptist Convention, U.S.A., Inc., the North American Baptist Conference, the Progressive National Baptist Convention, Inc., the Seventh Day Baptist General Conference, and the Southern Baptist Convention. These conventions have a combined membership of more than twenty seven million. Among Baptists, religious liberty is a fundamental and sacred principle. It is the opinion of the Baptist Joint Committee on Public Affairs that this principle is jeopardized by the decision on appeal in this case.

The Lutheran Council in the U.S.A. is a cooperative agency formed in November, 1966. The following three church bodies are in cooperating fellowship with the Office For Governmental Affairs of the Council which has responsibility for the issue of church/government relations:

(1) The American Lutheran Church composed of 4800 congregations

having approximately 2.4 million U.S. members;

(2) The Lutheran Church in America composed of 5800 congregations having approximately 2.9 million members; and

(3) The Association of Evangelical Lutheran Churches composed of 250 congregations having approximately 110,000 U.S. members.

The Lutheran Council is aware of rising concern within its participating church bodies of governmental activity in matters affecting the churches and their ministry.

The brief which these amici curiae seek leave to file argues first that the Schaumburg ordinance is unconstitutionally vague as applied to religious organizations and second, if the ordinance does apply to religious bodies, it violates the Religion Clauses of the First Amendment.

SANFORD JAY ROSEN
ROBIN B. JOHANSEN
ROSEN, REMCHO & HENDERSON
155 Montgomery St., #1502
San Francisco, Ca. 94104
(415) 433-6830

Attorneys for Amici Curiae

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BRIEF AMICI CURIAE ON BEHALF OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS IN THE U.S.A.

INTRODUCTION

This case concerns the degree to which a local government may regulate the solicitation of funds for charitable purposes. The specific issue before the Court is whether a local government may expressly prohibit solicitation by a charitable organization that expends more than 25% of amounts received as contributions on administrative and/or fundraising activities.

The district court held that the statute violated the First Amendment, and the Court of Appeals for the Seventh Circuit affirmed. Citizens for a Better Environment v. Village of Schaumburg, No. 76-C-470 (7th Cir., Dec. 1, 1978). (Petition for Writ of Certiorari, Appendix A.)

Religious organizations have a special interest in the outcome of this case. Unlike other charitable organizations, they can rarely be certain whether they are subject to solicitation regulations at all, because the regulations' coverage is often poorly defined. Indeed, the Court of Appeals in the instant action noted the vagueness with which the Schaumburg ordinance's coverage was defined:

> There is, for example, no express exemption from the charitable solicitation provisions for religious or political campaign canvassing combined with solicitation of funds, although this type of activity is arguably within the section 22-19 broad definition.
>
> Petition for Writ of Certiorari, Appendix A, p. A-8 (footnote omitted).

Application of the Schaumburg ordinance to religious organizations raises First Amendment problems of a different sort than those articulated by respondents and the other amici curiae. The Religion Clauses of the First Amendment narrowly circumscribe the degree to which government may interfere or become entangled with religion.

Although the amici curiae on whose behalf this brief is filed join in the arguments presented in the brief amicus curiae of the Coalition of National Voluntary Organizations, this case raises certain issues that are unique to religious organizations because of the special protections afforded them under the First Amendment. Accordingly, this brief amicus

curiae will address those issues of peculiar concern to religious organizations as they are affected by statutes that regulate charitable solicitation.

INTEREST OF THE AMICI CURIAE

The Interest of the amici is set forth in their Motion for Leave to File this brief.

ARGUMENT

I. The Schaumburg Ordinance Does Not State Clearly Whether Religious Organizations Are Subject To Its Regulation.

Religious organizations increasingly are confronted with state and local regulations that are unconstitutionally vague as to the scope of their coverage. The Schaumburg solicitation ordinance is a case in point. The ordinance defines "Charitable organization" as:

> any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organi-

> zation purporting to be such, which collects and solicits funds for charitable purposes.
>
> Schaumburg Village Code, Ch. 22, Section 22-19.

With perfect circularity, the ordinance defines "charitable purpose" as:

> Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.
>
> Id.

Most religious organizations engage in charitable or philanthropic activities. To fund such activities, many religious organizations rely heavily on the sort of personal solicitation that the Schaumburg ordinance seeks to regulate. Yet the ordinance is silent on its face as to whether religious groups are subject to its coverage. If they are, the ordinance violates both the Free Exercise and Establishment Clauses of the First Amendment. If only certain religious organizations are covered, i.e. those that engage in "charitable" activity as defined by the administrators of the ordinance, the ordinance may violate the Equal Protection Clause of the Fourteenth Amendment as well. No matter how it is interpreted,

in its coverage the ordinance is impermissibly vague, because "men of common intelligence must necessarily guess at its meaning." Connally v. General Const. Co., 269 U.S. 385, 391 (1926).

This ordinance, like countless others throughout the nation, possesses both of the constitutional infirmities that this Court disapproved on vagueness grounds in Hynes v. Mayor of Oradell, 425 U.S. 610 (1976). 1/

First, it is impossible for religious groups to determine whether they are subject to regulation under the Schaumburg ordinance. Indeed, the

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1/ For a comprehensive review of state statutes regulating charitable solicitation, see THE PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.). Currently at least five states expressly include religious organizations within their statutes' coverage. Of those five, the North Carolina statute was recently declared unconstitutional under the First, Fifth and Fourteenth Amendments. Heritage Village Church v. North Carolina, No. 77 CVS6460 (N.C. Ct.App. April 3, 1979). In addition a federal magistrate has recommended that the Minnesota statute be struck down for the same reasons. Valente v. Larson, Civ. 4-78-453 (D. Minn., 4th Div., May 3, 1979).

Court of Appeals in the instant case questioned the Village's assertion that the ordinance does not apply to religious groups, stating that such an exclusion "seems inconsistent with the broad definition involved." (Petition for Writ of Certiorari, Appendix A, p. A-8, n. 5.) If the legislative body and the courts cannot agree on the ordinance's coverage, religious organizations "necessarily must guess" as to whether they are subject to regulation. See Connally, supra.

The Schaumburg ordinance also possesses the second infirmity of the ordinance struck down in Hynes: the lack of implementing regulations designed to limit the discretion of the

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1/ (continued) from page 6

In 1947, a local ordinance similar to the Schaumburg ordinance came before this Court in Gospel Army v. Los Angeles, 331 U.S. 432 (1947) and Rescue Army v. Municipal Court, 331 U.S. 549 (1947). Because of the procedural posture of both cases, the Court did not reach the question of the constitutionality of the ordinance. On March 7, 1978, the Superior Court for the City and County of Los Angeles declared the Los Angeles ordinance unconstitutional. The matter is currently pending before the California Court of Appeal. Perlman v. Municipal Court, Civ. No. 54725 (2d App. Dist. Div. One).

individual officials who enforce the ordinance. 425 U.S. at 622. As it now exists, the Schaumburg ordinance permits officials to hold some religious groups subject to regulation while excluding others. For example, Village officials may decide that a local church that operates its own school is subject to the ordinance, while another that lends only occasional financial support to its sick or needy members is not.

The danger, of course, in such discretion is that it invites favoritism of one religious group over another. Conversely, such discretion allows selective enforcement against unpopular religions.

James Madison, in his famous Memorial and Remonstrance Against Religious Assessments, recognized the peril inherent in this kind of official discretion:

> [T]he bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second, an unhallowed

perversion of the means of salvation.

> Madison, "Memorial and Remonstrance Against Religious Assessments," Appendix II to Opinion of Douglas, J., dissenting in Walz v. Tax Comission, 397 U.S. 664, 732 (1970).

II. If Applied to Religious Organizations, the Schaumburg Ordinance And Others Like It Violate the Religion Clauses of the First Amendment.

The Religion Clauses of the First Amendment prohibit government both from interfering with the free exercise of religion and establishing or sponsoring any religion. This Court has noted the tension between the two prohibitions, "either of which, if expanded to a logical extreme, would tend to clash with the other. Walz v. Tax Commission, 397 U.S. 664, 668-69 (1970).

Application of the Schaumburg ordinance, or others like it, to solicitation by religious organizations violates both Religion Clauses of the First Amendment. They violate the Free Exercise Clause by restricting the amounts that religious groups may spend on solicitation and by imposing a cumulative burden of conflicting and

confusing regulations in various jurisdictions across the nation. In this sense, the statutes' constitutional violations are parallel to those suffered by secular charitable organizations, as described in the brief of the Coalition of National Voluntary Organizations.

In the context of religious solicitation, the cumulative burden of these statutes and ordinances echoes this Court's statement about taxation of religious practices:

> Those who can tax the exercise of this religiou practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance.
>
> Murdock v. Pennsylvania, 319 U.S. 105, 112 (1943).

As the other amici point out, limits on the amounts that groups may spend for solicitation, as well as other equally burdensome restrictions, may actually preclude charitable solicitation altogether. (Brief amicus curiae on Behalf of The Coalition of National Voluntary Organizations, et al. at 13-19.)

Of course, the interests of religious organizations are not identical to those of non-religious charitable organizations. The Establishment Clause,

provides the "major difference between churches on the one hand and the rest of the nonprofit organizations on the other." Walz v. Tax Commission, 397 U.S. 664, 708 (1970)(Douglas, J. dissenting). Mr. Justice Jackson described the difference in Everson v. Board of Education, 330 U.S. 1, 26 (1947)(Jackson, J. dissenting):

> [A State] may make public business of individual welfare, health, education, entertainment or security. But it cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character . . . . That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation, a difference which goes to the very root of religious freedom . . . .

As the Coaltion of National Voluntary Organizations brief notes, disclosure and reporting requirements serve as a less restrictive alternative to regulating secular organizations. However, as applied to religious organizations, this alternative, like the Schaumburg ordinance itself, violates the Establishment Clause of the First Amendment.

This case differs from most Establishment Clause cases in that the State is not seeking to aid a religious group but to regulate it. Even so, the regulations of the Schaumburg ordinance, if applied to religious groups, would impermissibly entangle the State in the affairs of the Church.

For purposes of applying its 25% limitation on solicitation expenditures, the Schaumburg ordinance differentiates between funds used for charitable purposes and "administrative expenses of the organization." (Schaumburg Village Code, Ch. 22, Section 22-20(g)). The latter which must be counted within the 25% limitation, include "salaries, attorneys' fees, rents, advertising expenses ... and related expenses incurred as administrative or overhead items." (Id.) Presumably, then, a minister's salary, the mortgage on the church, and even the purchase of hymnals would all be included within the 25% limitation as "administrative expenses." But in order to know whether these items are included in the 25% limitation, the State must make a determination based upon inspection of church records.

This Court has consistently struck down statutes that require state examination of church records and accounts. In Lemon v. Kurtzman, 403 U.S. 602, 620 (1971)(Lemon I), this Court stated:

> In the event that the total expenditures of an otherwise eligible school exceed this norm, the program requires the government to examine the school's records in order to determine how much of the total expenditures is attributable to secular education and how much to religious activity. This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction of church schools and hence of churches.

Just as in Lemon I, application of the Schaumburg ordinance to religious organizations would "involve excessive and enduring entanglement between state and church." 403 U.S. at 619.

In addition to evaluating a church's "administrative expenses," the State might find it necessary to examine other books and records in order to determine whether the church was soliciting for a "charitable purpose" that would make it subject to the statute. A similar prospect involving state aid to parochial schools recently led this Court to overturn a New York statute, stating:

> In order to prove their claims for reimbursement, sectarian schools would be placed in the position of trying to disprove any religious content in various classroom materials. In order to fulfill its duty to resist any possibly unconstitutional payment ... the State ... would have to undertake a search for religious meaning in every classroom examination offered in support of a claim.
>
> New York v. Cathedral Academy, 434 U.S. 125, 132-33 (1977).

Finally, the State might find it necessary to inquire into the good faith of church officials who assert that certain expenses are for charitable, as opposed to administrative, purposes. Only recently, this Court stated that such an inquiry may violate the First Amendment. National Labor Relations Board v. The Catholic Bishop of Chicago, ___ U.S. ___, 47 U.S.L.W. 4283 (March 21, 1979). In discussing the applicability of the National Labor Relations Act to religious schools, the Court noted that the Board might be called upon to determine unfair labor practice disputes in which the schools defended their practices on the basis of their religious creed:

> The resolution of such charges by the Board, in many instances,

> will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission. It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but the very process of inquiry leading to findings and conclusions.
>
> 47 U.S.L.W. at 4286-87.

Whether the issue is one of determining whether a group has a religious or a charitable purpose, or simply a matter of disclosure of amounts spent on solicitation, the Establishment Clause will not permit government inspection and evaluation of church books and records. To do so would create the kind of "intimate and continuing relationship between church and state" that this Court held was forbidden in Lemon I. 403 U.S. at 622.

CONCLUSION

Like Mr. Justice Harlan, we recognize "that it is far easier to agree on the purpose that underlies the First Amendment's Establishment and Free Exercise Clauses than to obtain agreement on the standards that should govern

their application" Walz v. Tax Commission, 397 U.S. 664, 694 (1970) Harlan, J. concurring). 397 U.S. 664, 694 (1970)(Harlan, J. concurring). In this instance, at least, it is clear that application to religious groups of the Schaumburg ordinance or the thousands like it across the country, violates the very purpose that underlies both clauses.

For these reasons, and for those stated in the brief amicus curiae of the Coalition of National Voluntary Organizations, et al., the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

SANFORD JAY ROSEN
ROBIN B. JOHANSEN
ROSEN, REMCHO & HENDERSON
155 Montgomery Street
Suite 1502
San Francisco, California
94104
(415) 433-6830

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Attorneys for the Amici Curiae

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DAVID C. VLADECK
ALAN B. MORRISON
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
Attorneys for Amici Curiae

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THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

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National Committee for Responsive Philanthropy, Public Citizen, National Organization of Women Legal Defense and Education Fund, National Black United Fund, and New York Public Interest Research Group hereby move the Court for leave to file the accompanying brief *amicus curiae* urging the Court to rule that any percentage-based limitations on the use of a charity's funds as a condition of being entitled to solicit contributions, is constitutionally impermissible.

INTERESTS OF *AMICI CURIAE*

Amici are a broad range of tax-exempt charitable, educational, and advocacy organizations whose ability to raise funds and promote their organizational objectives will be directly affected by the disposition of the present proceeding. Each *amicus* has a significant interest in ensuring that it is not subject to burdensome, content-based restrictions on its right to solicit funds, and each *amicus*, except for the National Committee for Responsive Philanthropy, would not qualify as a "charitable organization" under the definition in the ordinance challenged in this action since it does not meet the percentage requirement set forth in the ordinance. In addition, several *amici* have been accorded tax-exempt status under section 501(c)(4) of the Internal Revenue Code, rather than section 501(c)(3), and are thus automatically disqualified from soliciting as charitable organizations under the ordinance.

The National Committee for Responsive Philanthropy represents the interests of its members and other charitable organizations whose efforts are directed at social and political reform. Its members include groups involved in educational activity, health, social welfare, housing, neighborhood revitalization, civil rights, equal employment opportunities, and environmental protection. Although the Committee is funded primarily by foundation grants, some of its member organizations employ door-to-door solicitation to raise funds and promote their organizational objectives and have been granted tax-exempt status under section 501(c)(4) of the Internal Revenue Code.[1]

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[1] The following organizations are members of the Committee: The Action Center; American Friends Service Committee; Association of Voluntary Action Scholars; Bay Area Committee for Responsive Philanthropy; Carolina Brown Lung Association; Catholic Charities; Center for Community Change; Center for Community Organizations, Center for Renewable Resources; Chicano Education Project; Children's Adoption Resource Exchange; The Children's Foundation; Clearinghouse for Community Based Free Standing Educational Institution; Cleveland Women's Counsel; Community Renewal Society; Consumer Federation of America; Council on Municipal Performance; Council for Public Interest Law; Designs for Change; East Harlem Council for Human Services; Emergency Land Fund; Environmental Policy Center. Foundation for Exceptional Children; Fund for Constitutional Government; The Grantsmanship Center; The Gray Panthers; Edward W. Hazen Foundation; Housing Conservation Coordinators; International Peoples Appeal; John D. Rockefeller 3rd Fund; Mountain Association for Community Economic Development Mujeres en Desarrollo; National Center for Urban Ethnic Affairs; National Conference of Puerto Rican Women; National Council of La Raza; National Gay Task Force; National Self-Help Resource Center; National Urban Fellows; National Women:s Education Fund; Native American Rights Fund; National Organization of Women Legal Defense and Education Fund; Philadelphia Committee for Responsive Philanthropy; Positive Futures; Puerto Rican Legal Defense and Education Fund; Social Action Service – Diocese of Amarillo; Southwest Alternatives Institute; The Support Center; The Youth Project; and National Rural Center.

Public Citizen is a non-profit organization involved in a wide variety of activities on behalf of consumers, including research on health and safety issues, lobbying for legislative reform, and litigation. Public Citizen employs a full-time staff of health professionals and attorneys to conduct these activities directly, and is supported by contributions from approximately 65,000 individuals annually. Although Public Citizen depends primarily on direct mail solicitation, it also relies on personal solicitation of private contributions.

The National Organization of Women ("NOW") Legal Defense and Educational Fund is a not-for-profit civil rights organization established to perform a wide range of legal and

educational services in support of efforts to eliminate sex-based discrimination. Among its activities are monitoring the enforcement of anti-discrimination laws, conducting research about sex-based discrimination, gathering and disseminating information about women's legal rights, and participating in law reform litigation. These programs to advance women's rights are supported largely by contributions from individuals solicited through direct mail and in-person appeals. NOW Legal Defense and Education Fund has found it necessary to develop a full time staff to directly carry out and expand its program. The organization's expenditures for staff, salaries, and the administrative expenses necessary to support the staff's activities are essential and directly related to achieving its charitable purposes.

The National Black United Fund and its thirteen affiliate organizations raise funds to assist local charitable groups involved in matters of particular concern to the Black community, such as urban development, job training, and establishing cultural and educational programs. Many of the Fund's affiliate organizations employ personal solicitation as a means of combining their fund-raising efforts with their educational objectives.

New York Public Interest Research Group ("NYPirg") is a non-profit organization with 150,000 members active in a broad range of consumer and environmental issues. NYPirg has a staff of over 100 persons, including scientists, health-care professionals, researchers, attorneys, and lobbyists. NYPirg depends on door-to-door solicitation as a major component of its educational efforts and as its primary means of raising funds. During fiscal year 1978, NYPirg raised over $450,000 from door-to-door solicitation.

The interests of *amici* in this case are the interests of charitable organizations and their members in establishing that the

right to engage in solicitation cannot be abridged solely because a municipality does not approve of the manner in which organizations seek to achieve their charitable purposes. *Amici* therefore seek a broad ruling from this Court declaring that the imposition of percentage requirements and other content-based restrictions as conditions of the right to engage in charitable solicitation violates the First Amendment. Because neither the brief of respondent nor that of the other *amicus*, Coalition of National Voluntary Organizations, *et al.*, addresses this case from this broad perspective, the accompanying brief will provide the Court with a different vantage point.

This case is of critical concern to *amici* for two further reasons. First, it concerns a *municipal* ordinance. While *amici* do not dispute that the government has an interest in protecting citizens from fraudulent solicitation practices, the limits of local regulation must be particularly narrow to ensure that charities are not burdened by multiple and inconsistent regulations. Appropriate disclosure requirements, as well as use of traditional criminal fraud statutes, can adequately serve to protect the public, and thus there is no necessity for extensive local regulation in this area.

Just as importantly, the rationale offered by petitioner to justify the ordinance challenged, if accepted by this Court, has broad implications. It might be used to justify imposition of comparable restrictions on other forms of solicitation, such as direct mail, which affect all charities since the limitation on the use of the money raised is unrelated to the solicitation method employed. Upholding such requirements would deal a crippling blow to most charitable organizations, including *amici*. For these reasons, *amici* are vitally concerned about this case, and submit that the presentation of their views in the accompanying brief will assist the Court in considering the important constitutional issues raised in this action from a different viewpoint

than that of the respondent, whose interest is primarily in sustaining the judgment below.

Amici sought the consent of the parties to the filing of this brief, but they were only able to secure permission of respondent.

Respectfully submitted,

ALAN B. MORRISON
DAVID C. VLADECK
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704
Attorneys for Amici Curiae
National Committee for
Responsive Philanthropy, *et al.*

July 20, 1979

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1335

VILLAGE OF SCHAUMBURG,
Petitioner,

v.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF *AMICI CURIAE* NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY, PUBLIC CITIZEN, NATIONAL ORGANIZATION OF WOMEN LEGAL DEFENSE AND EDUCATION FUND, NATIONAL BLACK UNITED FUND, AND NEW YORK PUBLIC INTEREST RESEARCH GROUP

INTERESTS OF *AMICI CURIAE*

The interests of *amici* are set out in the accompanying motion for leave to file this brief *amicus curiae.*

CONSTITUTIONAL PROVISION AND MUNICIPAL REGULATION INVOLVED

The First Amendment to the United States Constitution provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, . . . or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

The Village of Schaumburg Code, Chapter 22, Article III, Section 22-20, provides in pertinent part:

> Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:
>
> * * *
>
> (f) Satisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).
>
> (g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
>
> (1) Salaries or commissions paid to solicitors;
>
> (2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

> For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization.

QUESTION PRESENTED

Does the First Amendment permit a municipality, under the guise of protecting residents from fraud, to impose burdensome restrictions upon door-to-door solicitation of funds by a charitable organization solely because the municipality does not approve of the uses which the organization makes of its funds in seeking to achieve its charitable purposes?

STATEMENT OF THE CASE

Respondent Citizens for a Better Environment ("CBE") is an organization engaged in research and advocacy on environmental issues, particularly those affecting the State of Illinois. Like many organizations concerned with regional and local issues, CBE depends heavily on contributions from individual citizens for financial support. CBE is registered and in good standing with the Illinois Charitable Trust Division, and is recognized by the federal government as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). Nonetheless, in order to raise funds and engage in its educational activities in the Village of Schaumburg, Illinois (the "Village" or "petitioner"), CBE first had to obtain permission from the Village. Petitioner denied CBE a permit under an ordinance which requires that a "charitable organization" must demonstrate not only that it is a tax-exempt organization under section 501(c)

(3), but also that at least 75 percent of its funds be used directly for the "charitable purposes of the organization." Specifically excluded from the definition of "charitable purposes" are funds expended for staff salaries, overhead, attorneys' fees, advertising, and salaries or commissions paid to solicitors. Thus, the only type of charitable organizations which can meet the Village's rigorous standards are the most traditional charitable organizations which simply channel money to other charities or directly to their intended beneficiaries. Organizations whose staffs directly deliver social services, engage in advocacy, or provide public education cannot qualify as charitable organizations under the Village's ordinance.

Having been denied a solicitation permit, CBE brought this action challenging the constitutionality of the percentage requirement under the First Amendment. Consistent with CBE's position, the district court held that the percentage requirement constituted censorship and impermissibly restrained the exercise of First Amendment freedoms. The court further found that the Village had no compelling interest in prescribing such a test and, accordingly, struck down the percentage requirement as "void and unconstitutional on its face." (Petition for Writ of Certiorari, Appendix B, B-4).

The court of appeals affirmed the district court's ruling, although apparently on narrower grounds. The court rejected the Village's contention that the percentage requirement was reasonably related to its asserted interest in protecting residents from fraud. (Petition for Writ of Certiorari, Appendix A, A-7). It emphasized that although the prevention of fraud is a valid governmental interest, the percentage requirement is not a sufficiently narrow solution because it prohibits or unduly burdens solicitation by organizations which devote large portions of their resources to

gathering and disseminating information or to other means of directly promoting their objectives. (*Id.*, at A-9 to A-11). The court concluded that even if the percentage requirement was designed to protect against fraud, it was not directly related to that purpose and narrowly fashioned to achieve it with minimum interference with First Amendment rights. (*Id.*)[1]

Despite the defects it found in the ordinance, the court limited the reach of its holding to research and advocacy organizations like CBE which combine education of the public with fund-raising activities. With respect to other types of charitable organizations, the court declined to hold that the percentage requirement was invalid on its face. (*Id.*, at A-10). In so ruling, the court did not explain the basis for its differentiation among types of charitable groups or its implicit conclusion that there is some correlation between the potential for fraud and the type of organization involved. Instead, the court left open the question of whether a more narrowly drawn ordinance containing a percentage restriction could pass constitutional muster in any of three cases: "where salaries paid are so large in relation to the services provided that the organization is actually a for-profit venture," where "the funds collected will be used for purposes other than those expressly or impliedly represented," or where the solicitors are "mere conduits for contributions." (*Id.*). Under those circumstances, the court suggested that a narrow ordinance might

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[1] The court of appeals also found that several key provisions of the ordinance, most notably the definition of a charitable organization, were fatally vague. *Amici* agree with the court of appeals that the ordinance is too vague to meet constitutional standards. However, because the court below fully addressed the vagueness issue, we will not discuss that issue.

be found to be reasonably related to the stated governmental goal of preventing fraud.

SUMMARY OF ARGUMENT

This case presents the question whether a municipality may, consistent with the First Amendment, impose burdensome restrictions on door-to-door solicitation of funds by a charitable organization solely because the municipality does not approve of the manner in which the organization seeks to advance its charitable purposes. Under the guise of seeking to protect its residents from fraud, the Village of Schaumburg, like many other municipalities and local governments, has enacted an ordinance which requires that to obtain a permit to solicit door-to-door, charitable and non-profit organizations must establish that at least 75 percent of the funds raised are used in the way which the Village considers appropriate. Organizations that do not meet the percentage requirement are either barred from soliciting funds or are compelled to solicit under the Village's far more onerous regulations governing solicitation by "for-profit" entities.

Because both the solicitation of funds and the underlying activities of CBE are protected by the First Amendment, the ordinance can be sustained only if it is narrowly drawn to meet a compelling state interest and is the least restrictive alternative. *Thomas v. Collins*, 323 U.S. 516, 540-41 (1945). As the courts below correctly found, the Village's percentage requirement is unconstitutional because it does not serve the stated governmental goal of protecting Village residents from fraud. Fraud is not involved in this case because there is no misrepresentation of the use to which the solicited funds will

be put. Instead, the Village simply believes that it would be better public policy to have charities funnel this money directly to beneficiaries or to other charities rather than engage in the activities themselves. Any confusion that Village residents may have about whether a soliciting organization is using the money for charitable purposes or to line the pockets of its sponsors can be dealt with by narrow disclosure statutes rather than by the heavy penalties imposed by this ordinance.

Percentage restrictions are also offensive because they violate the basic First Amendment principle that the government may not regulate the content of speech. Rather than being content-neutral, the sole function of a percentage-based regulation is to regulate content. By distinguishing among organizations on the basis of their activities, the Village is in essence promoting the speech of those charities which act as conduits to channel funds to worthwhile endeavors, while prohibiting or interfering with the speech of charities which directly engage in such activities. Accordingly, any percentage-based regulation plainly conflicts with fundamental First Amendment associational and free speech rights.

There are two further reasons this Court should find percentage requirements imposed by municipalities unconstitutional. First, it must be emphasized that this is a *municipal* ordinance. While *amici* concede that the government has an interest in protecting citizens from fraud, the limits of municipal regulation must be particularly narrow to avoid subjecting organizations to multiple and inevitably inconsistent local requirements. Just as importantly, if this Court adopts the narrow ruling of the court of appeals, the percentage requirement challenged here may well be imposed on other types of solicitations, such as direct mail, since the potential for "fraud" as seen by petitioner is no different there than in the context of door-to-door fund-raising. Such restrictions would deal a crippling blow to most charities, particularly

multi-jurisdictional ones, and would seriously undermine the federal policy embodied in the Internal Revenue Code of encouraging Americans to support the charity of their choice, not the government's.

ARGUMENT

There can be no dispute that canvassing and door-to-door solicitation are protected First Amendment activities. *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976); *Thomas v. Collins*, 323 U.S. 516 (1945); *Martin v. Struthers*, 319 U.S. 141 (1943); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Schneider v. State*, 308 U.S. 147 (1939). Accordingly, attempts by municipalities to restrict the right to engage in door-to-door solicitation are unconstitutional unless they can survive the "exacting scrutiny" required by the First Amendment. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978). Petitioner must therefore shoulder the burden of proving that its restrictions on solicitation are both closely related to the advancement of a compelling governmental interest and are narrowly drawn "in such a manner as not to intrude upon the rights of free speech and free assembly." *Hynes v. Mayor of Oradell, supra*, 425 U.S. at 616, *quoting, Thomas v. Collins, supra*, 323 U.S. at 540-41. *See also Elrod v. Burns*, 427 U.S. 347, 362-63 (1976); *Buckley v. Valeo*, 424 U.S. 1, 25 (1976); *NAACP v. Button*, 371 U.S. 415, 438-39 (1963); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Talley v. California*, 362 U.S. 60, 62-64 (1960); *see generally* Note, *Less Drastic Means and the First Amendment*, 78 Yale L.J. 464 (1969).

The percentage requirements contained in petitioner's ordinance do not further the stated governmental interest in preventing fraud. Rather, they serve to differentiate among charitable organizations solely on the basis of the way an

organization uses its funds to advance its objectives, thereby affecting the form and content of the organization's activities. Thus, the percentage-based requirement at issue in this case is a classic example of content-based regulation and, accordingly, is constitutionally impermissible.

I. THE PERCENTAGE-BASED PROVISION OF THE ORDINANCE BEARS NO RELATION TO ANY LEGITIMATE GOVERNMENTAL OBJECTIVE.

Charitable organizations employ a wide range of methods in raising funds. Some depend on mail solicitations, telephone campaigns, and advertising. Others rely primarily on handbills and door-to-door solicitation. Even raffles and church-sponsored bake sales are used to raise money. Each method has its advantages and disadvantages, and each carries with it different risks, benefits, and costs to the organization. The choice of which methods to use is necessarily influenced by such factors as out-of-pocket expenses and the likely return. But among the most determinative factors are those that relate to the nature of the organization and its objectives. An organization whose purpose is to raise money for little league uniforms is not likely to solicit by direct mail or by advertising for contributions in *The New York Times*. On the other hand, broad-based organizations seeking to disseminate information often will choose such methods to solicit contributions. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). For a local or regional group whose principal goals include educating the public and generating broad-based support for its political or social objectives, direct personal solicitation is frequently a preferred method of raising money because it allows the coupling of fund-raising efforts with its charitable endeavors. *Cf. Martin v. Struthers, supra*, 319 U.S. at 145-46.

While each method of soliciting funds may also pose some risks to society, the government can safeguard the

public in a number of ways. Subject to constitutional limitations, governmental entities can require permits, registration, disclosure, filings, or, where the perceived danger to the public is substantial, impose restraints or prohibit some activities entirely. Each of these modes has a specific purpose and effect, and each necessarily results in intrusions into the activities of the organizations involved.

The Village of Schaumburg argues that its ordinance furthers two compelling governmental interests: protecting the physical safety of its residents and preventing fraud. (Petitioner's Brief, at 27, 28-33) ("Pet. Br."). However, any nexus that exists between the percentage-based regulation at issue and the stated justifications is too tenuous to withstand scrutiny under the First Amendment.

With respect to the protection of the physical safety of Village residents, the restriction is fatally indirect and speculative. Indeed, the Village has not suggested that door-to-door solicitation by fund-raisers for charities that do not meet the 75 percent requirement is particularly fraught with dangers to citizen safety or that assaults are more likely to be committed by such solicitors. Nor does logic or common sense suggest that this is the case. If the Village is genuinely interested in protecting the physical safety of its citizens, it should enforce, and if necessary modify, the many other provisions that have already been enacted toward that end. For example, section 22-23 of the Village's ordinance prohibits indicted or convicted felons from being used as solicitors, and section 22-24 prohibits solicitation during the evening. Each of these provisions is tailored with relative precision towards assuring the public's safety. But it is evident that the percentage requirement does not similarly advance that interest: there is simply no correlation between the conduct of the solicitors and the percentage disbursement of the organization's funds.

The Village also claims that the percentage requirement is "intimately related" to the permissible goal of protecting its residents from fraudulent solicitation practices. (Pet. Br. at 29). The Village insists that in instances where "a majority of the funds are utilized not for the charitable purposes for which the organization is purportedly organized, but instead to compensate canvassers, officers, and employees, it must be concluded that what is involved is nothing more or less than a commercial enterprise even though it be dressed in the trappings of a charitable or environmental purpose." (*Id.*) According to the Village, the ordinance protects against this perceived abuse by stimulating citizen inquiry. That is, if the citizen asks the solicitor whether he or she has received a permit from the municipality, the citizen knows immediately whether the solicitor represents a charitable organization or is involved in either a commercial or fraudulent enterprise. (*Id.*).[2]

The Village's contention that the percentage requirement is designed to protect against fraud is unpersuasive as a matter of logic and constitutionally insufficient to sustain the restrictions imposed. The gravamen of fraud is inducing someone to act on the basis of misinformation. Prosser, THE LAW OF TORTS 683-88 (4th ed. 1971). However, the ordinance does nothing to ensure that residents are not misled or deceived by solicitors. Rather, the ordinance em-

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[2] Since petitioner's ordinance does not require solicitors to actually carry permits or provide proof of identity or organizational affiliation upon request, the requirements can easily be evaded, and thus they are indistinguishable from those struck down in *Hynes v. Mayor of Oradell, supra.* As Mr. Justice Brennan observed in his concurring opinion in *Hynes*, ". . . the requirement can hardly be justified as protective of overriding governmental interests since evasion can easily thwart that objective." 425 U.S. at 629. *See also Buckley v. Valeo, supra,* 424 U.S. at 45.

bodies the illogical and unsupported judgment that an organization which is primarily engaged in research or advocacy, or otherwise fails to comply with the Village's definitional rules, is not a "charitable organization" and that allowing such an organization to identify itself as "nonprofit" or "charitable" is likely to result in fraud. Based on this judgment alone, the ordinance bars such organizations from soliciting, or forces them to accept the "for-profit" label and to proceed under more stringent rules. Moreover, although the obvious means of combatting fraud is to require the disclosure of information, the percentage requirement provides no information to a citizen about whether an organization meets his or her particular criteria for contributing, or engages in the types of activities that he or she deems to be "charitable" or worthwhile. Rather, it proscribes solicitation solely on the basis of an arbitrary percentage.[3]

Even if the Village were correct in claiming that the percentage requirement had some correlation to its stated purpose of preventing fraud, the ordinance would still be unconstitutional because of the way it defines what constitutes a charitable organization. As noted above, in order to survive the "exacting scrutiny" applied in this area, any re-

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[3] Even if the unsupported assumption that the percentage requirement will reduce the likelihood of fraud in door-to-door solicitation were true, the justification is far from compelling. Indeed, it is no more substantial than the support mustered for a number of other restrictions on speech which this Court has struck down in recent years. *See, e.g., First National Bank of Boston v. Bellotti, supra* (interest in preserving the integrity of the electoral process); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748 (1976) (interest in maintaining high professional standards among pharmacists); *Buckley v. Valeo, supra* (interest in preserving integrity of electoral process).

striction must be closely tailored to the governmental interest to minimize interference with First Amendment rights. *Hynes v. Mayor of Oradell, supra,* 425 U.S. at 616. Yet petitioner's ordinance is extreme in its breadth. The arbitrary 75 percent restriction ensures that all but the most traditional charitable organizations fall outside the sweep of the ordinance's definition of "charitable organization." Charitable groups which engage in research of any kind, including scientific and medical research, or have as their primary purpose the promotion of a social or political goal, cannot qualify. Nor can organizations qualify if they devote more than 25 percent of their resources to litigation or informing and educating the public through advertising. Thus, for example, *amicus* National Organization of Women Legal Defense and Education Fund would be excluded, since far more than 25 percent of its resources are devoted to these activities. Indeed, even not-for-profit hospitals would not qualify, since virtually all of their expenditures are for "salaries" and "overhead."

Further limiting the type of organization which can qualify is the ordinance's requirement that only organizations which have been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501 (c)(3), may solicit as charitable organizations. By so providing, the Village is excluding a broad range of recognized non-profit and charitable organizations. For example, organizations covered by section 501(c)(4) include charitable organizations "operated exclusively for the promotion of social welfare." Yet these organizations, which run the gamut from organizations seeking to reform social and political injustice through legislative efforts, such as *amicus* New York Public Interest Research Group, to community groups raising money for children's recreational facilities, like the organizations sponsored by *amicus* National Black United Fund, are

as deserving of public support as many or all of the organizations qualifying under the Village's ordinance. Nonetheless, they are categorically prohibited from soliciting funds in the Village as charitable organizations. Accordingly, even assuming that in some instances the percentage restriction could serve the stated governmental interest in preventing fraud, it is apparent that the restriction is far from closely tailored to achieve that goal. This defect alone is fatal.[4]

This Court, in the seminal decision of *Schneider v. State*, 308 U.S. 147 (1939), invalidated a ban on door-to-door canvassing and street distribution of circulars on the ground that, although the regulations bore some relation to the legitimate governmental interests in minimizing litter, noise, and traffic congestion and in guarding against fraud, these objectives could be achieved by less draconian measures. *Id.* at 164. *See also Martin v. Struthers*, 319 U.S. 141, 148 (1943). The same is true here. The claim of potential fraud raised by the Village – that residents may be induced into contributing to essentially for-profit organizations posing as charities – can be met directly through the enactment and enforcement of disclosure rules. Arming citizens with the information they need to assess whether the organization is worthy of contributions is surely a far more direct and far

[4] Because the ordinance flatly prohibits, or at least seriously interferes with, protected First Amendment activities, it also constitutes a forbidden prior restraint. This Court has repeatedly held that any system of prior restraint bears a heavy presumption against its constitutionality, *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963), and that the government carries a heavy burden in justifying the imposition of any restraint. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). In this case, the Village has alleged only that the restraint is needed to avert the possibility of fraud resulting from allowing charitable organizations not meeting its definition to solicit funds. Such speculation cannot overcome the heavy presumption against prior restraint.

less intrusive method of protecting against fraud than the Village's total prohibition on solicitation by organizations that do not meet the percentage restriction. As this Court long ago observed: "[i]f there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression." *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring), *quoted in Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 97 (1977).[5]

[5] *Amici* do not suggest that the Village itself may impose disclosure requirements. While the prevention of fraud is an important governmental interest, it should be dealt with at the federal or perhaps state level to ensure that national and regional organizations are not subject to inconsistent and burdensome local requirements.

The Village's argument also overlooks the fact that the State of Illinois has specifically undertaken to protect its residents from fraud by requiring disclosure of this kind of information. Like most states, Illinois requires that charitable and non-profit organizations intending to solicit funds must file certified annual audits and other reports. The intent underlying the Illinois statute is precisely that offered by the Village to justify its percentage restrictions – protecting the public from fraud by essentially for-profit organizations posing as charities.

Similarly, the federal government also regulates in this area both to prevent fraud and to provide subsidies through the tax laws to socially useful organizations. In order to qualify as tax-exempt, organizations must file financial reports and other information demonstrating their charitable nature. Thus, the Village is seeking to have its judgment of what constitutes a charitable purpose supersede that of both the federal and state governments. The federal government has also undertaken to protect citizens from fraudulent mail solicitation practices. 18 U.S.C. § 1341. In addition, Congress has conducted hearings to look into whether more rigorous regulation is needed in this area, though to date it has not enacted any legislation. *See* Hearings on H.R. 41 before the Subcomm. on Postal Personnel and Modernization of the House Comm. on the Post Office and Civil Service, 95th Cong., 1st Sess. (1977).

II. THE ORDINANCE VIOLATES THE FUNDAMENTAL RIGHTS OF CHARITABLE ORGANIZATIONS, THEIR MEMBERS AND BENEFICIARIES, AND THE VILLAGE RESIDENTS.

The constitutional defects inherent in the percentage requirement become even more apparent when arrayed against the constitutionally protected rights it infringes. First, the requirement abridges the First Amendment free speech rights of the organizations and the Village residents. In addition to an organization's right to make public its viewpoint and to engage in solicitation and canvasssing, *see, e.g., Hynes v. Mayor of Oradell, supra,* 425 U.S. at 616, the Village residents have an independent and equally compelling right to receive information and to make informed choices based on such information. *See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, supra,* 425 U.S. at 756-57 (the First Amendment affords protection "to the communication, to its source and to its recipients both"). *Procunier v. Martinez,* 416 U.S. 396, 408-09 (1974); *Kleindienst v. Mandel,* 408 U.S. 753, 762-63 (1972).

This Court has repeatedly recognized "that door-to-door solicitation and canvassing is a method of communication essential to the preservation of our free society." *Hynes v. Mayor of Oradell, supra,* 425 U.S. at 624 (Brennan, J., concurring). In a similar vein, in *Schneider v. State,* 308 U.S. 147, 164 (1939), the Court observed that:

> [P]amphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people.

The Court echoed this sentiment in *Martin v. Struthers, supra,* 319 U.S. at 145-46, where Mr. Justice Black, speaking for the Court, noted "[d]oor to door distribution of circulars is essential to the poorly financed causes of the little people." *See also Buckley v. Valeo, supra,* 424 U.S. at 19. Yet despite this historic concern for protecting direct, personal communication, the Village ordinance prohibits many charitable groups from engaging in this form of communication if they seek to raise funds at the same time.

One of the particularly anomalous features of the ordinance is that the Village arrogates to itself the power to discriminate against organizations which the federal government has recognized are valid charitable organizations and are worthy of public support by granting them tax-exempt status. Through the percentage requirement, the Village is seeking to discourage activities that the federal government is seeking to promote by way of tax subsidies. Thus, the Village has effectively taken upon itself the role of final arbiter of what activities are charitable, even though its definition plainly conflicts with that of the federal government.

In the court below the Village contended that organizations failing to qualify under its definition of charitable organizations may at least *apply* for a permit to solicit under the more stringent "for-profit" standards. (Petition for a Writ of Certiorari, Appendix A, at A-9, n.6). There are several serious flaws in this approach, however. First, this Court has rejected precisely this argument – *i.e.*, that there is no abridgement when there are alternative channels available to the speaker and listener – in a number of cases. *See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, supra,* 425 U.S. at 757 n.15; *Spence v. Washington,* 418 U.S. 405, 411 n.4 (1974); *Healy v. James,* 408 U.S. 169, 183 (1972); *see also Procunier v. Martinez, supra,* 416

U.S. at 408-409. Moreover, the ordinance does not make it clear whether a charitable group that does not qualify as a "charitable organization" under the ordinance is allowed to proceed under the provisions concerning for-profit concerns. Indeed, even the Village is not sure. (Petition for a Writ of Certiorari, Appendix A, at A-9, n.6).

The Village's argument also ignores the fact that the consequences of being denied the right to solicit door-to-door or having to proceed as a "for-profit" concern are considerable. An outright prohibition on direct, in-person solicitation poses a serious dnager to the continued financial viability of many charitable organizations whose objectives are to promote local or regional concerns. That danger is only marginally reduced if they are foreced to proceed as for-profit concerns. Petitioner's for-profit solicitation regulations are far more onerous than those for charitable organizations. For example, for-profit concerns are subject to far more rigorous filing requirements, *see* section 22-8, may be investigated to determine the moral character and reputation of their solicitors, *see* section 22-9, and may be forced to wait up to thirty days for the issuance of a permit. *Id.* Thus, having to proceed under the Village's "for-profit" rules significantly increases the burdens on non-qualifying organizations. More importantly, being labeled as a "for-profit" organization places a charity at a tremendous disadvantage in competing for contributions with groups petitioner calls "charitable organizations." *Cf. Bob Jones University v. Simon*, 416 U.S. 725, 729-30 (1974). In fact, compelling organizations which have been recognized as charitable by the federal or state government to proceed as for-profit organizations can lead to precisely the misunderstanding the Village states it is trying to protect against. Accordingly, the Village's claim that the possibility that non-qualifying charitable organizations can proceed under the for-profit

provisions of the ordinance is without foundation in law or in fact and should thus be rejected.[6]

The ordinance is also constitutionally infirm because it interferes with protected associational rights. In effect, the ordinance tells all groups seeking to solicit as charities that they must operate in the manner that the Village dictates – spending money in the way that the Village deems "charitable" and avoiding activities, such as research or other worthwhile endeavors conducted by its staff, litigation, and advertising, that petitioner considers inappropriate. The Village therefore seeks to stand almost as a super board of directors, directing the organization's spending, structure, and indeed its objectives, to those activities the Village prefers. Failure to heed the Village's instructions results in a denial of a charitable solicitation permit.

As Mr. Justice Harlan noted in his dissent in *NAACP v. Button, supra*, 371 U.S. at 452-53, "[f]reedom of expression embraces more than the right of the individual to

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[6] A related, equally serious flaw stems from the assumption underlying the percentage restriction that organizations which do not meet the ordinance's definition of "charitable" are therefore "commercial" in nature. Based on this assumption, the Village contends that non-qualifying organizations are not entitled to the full panoply of constitutional protections and that it may rightfully prohibit such "commercial" entities from soliciting. (Pet. Br. at 29). Such a restricted view of the scope of First Amendment protection cannot be sustained in light of this Court's recent opinions emphasizing that First Amendment protection does not depend on the speaker, but rather on the nature of the communication. *In re Primus*, 436 U.S. 412, 438 (1978); *Linmark Associates, Inc. v. Township of Willingboro, supra*, 431 U.S. at 91-93; *Virginia State Board of Pharmacy v. Virginia Citizens Consumers Council, supra*, 425 U.S. at 761-64. No longer can a governmental unit justify restraining speech simply by tarring it with the label "commercial speech."

speak his mind. It includes also his right to advocate and his right to join with his fellows in an effort to make that advocacy effective . . . ." The ordinance also seriously infringes that right. Organizations such as CBE and *amici*, which are constituted to promote consumer, environmental, and other social interests directly, are likely to expend the bulk of their funds to employ staff, to engage attorneys to seek legal redress, and to spend money on advertising to promote their cause. Yet it is precisely these organizations which are prohibited from soliciting for funds, thereby barring them from raising money to support their efforts, and chilling them from disseminating information and enlisting public support.[7]

Although arguably aimed at the way charities use their funds, the ordinance inevitably affects the content of the organization's objectives and activities, thereby violating another right of CBE and others. It is firmly rooted in the history of the First Amendment that, absent the most extraordinary circumstances, the "government has no power to restrict expression because of its message, its ideas, its

[7] In this regard, the ordinance plainly conflicts with the admonition of the Court in *Buckley v. Valeo, supra.* There this Court invalidated limitations on expenditures for political activities as violative of the First Amendment, cautioning that:

> The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government but the people – individually as citizens and candidates and collectively as associations and political committees – who must retain control over the quantity and range of debate on public issues in a political campaign.

424 U.S. at 57.

subject matter, or its content." *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). *See also Cohen v. California*, 403 U.S. 15, 24 (1971); *Street v. New York*, 394 U.S. 576 (1969); *New York Times Co. v. Sullivan, supra*, 376 U.S. at 269-70; *NAACP v. Button, supra*, 371 U.S. at 445. This Court has often warned that any restriction on expressive activity because of content would completely undercut the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *New York Times Co. v. Sullivan, supra*, 376 U.S. at 270. This Court recently amplified this basic constitutional precept:

> [The government] . . . may not select which issues are worth discussing or debating in public facilities. There is an "equality of status in the field of ideas," and the government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by public groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusion from a public forum may not be based on content alone, and may not be justified by reference to content alone.

Police Department of the City of Chicago v. Mosley, supra, 408 U.S. at 96, *citing* A. Meiklejohn, POLITICAL FREEDOM: THE CONSTITUTIONAL POWER OF THE PEOPLE 27 (1948). Since canvassing and door-to-door solicitation are protected forms of expression, restrictions on these activities can only be upheld if they are neutral in their impact on content.

Rather than being content-neutral, the sole function of a percentage-based regulation is to regulate content. By dis-

tinguishing among organizations on the basis of the type of activities in which they are engaged, the Village is in essence promoting the speech of those more traditional charities, which merely act as conduits to transfer funds to other charities, while prohibiting or interfering with the speech of those charitable organizations such as CBE and *amici* which directly engage in research, litigation, lobbying, and other charitable and educational activities. This broad distinction is based only on content. Indeed, the Village concedes that the percentage requirements are based on content, though it casts the distinction as one between truly charitable organizations and those which are actually commercial in nature. (Pet. Br., at 29).

Underscoring the fact that the ordinance regulates content is that it specifically excludes funds expended for attorneys' fees and advertising as legitimate components of an organization's charitable efforts. The Village offers no explantion of how these exclusions bear any relation to, much less further, the stated purpose of preventing fraud. Nor can any plausible explantion be discerned. On the contrary, it is evident that the exclusions are intended solely to prohibit organizations which are significantly and routinely engaged in litigation, research, and the public dissemination of information from soliciting for funds in the Village. The Village is thus acting as a censor, dictating the acceptable bounds of content to organizations desiring to solicit. The unambiguous message carried by the percentage requirement is that unless the organization confines its activities and the degree to which it engages in them to the ordinance's strict specifications, it will be barred from soliciting funds in the Village. In this respect, the ordinance suffers from the same defects found in the restrictions on political advertising by corporations which were struck down in *First National Bank of Boston v.*

Bellotti, supra, 435 U.S. at 785, on the ground that they impermissibly dictated the bounds of speech. In so ruling, this Court noted:

> If a legislature may direct business corporations to "stick to business," it also may limit other corporations – religious, charitable, or civic – to their respective "business" when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment.

Nor is the ordinance different in effect from that invalidated in *Police Department of the City of Chicago v. Mosley, supra.* There this Court struck down a general ban on picketing near schools since it excepted labor picketing. thereby unconstitutionally discriminating among pickets on the basis of their message. Just as in *Mosley*, the ordinance challenged here plainly discriminates among organizations on the basis of their message and therefore is unconstitutional. *See also Madison School Dist. v. Wisconsin Employment Relations Comm'n,* 429 U.S. 167, 176 (1976).

The fact that the Village has chosen an organization's involvement in litigation and advertising as criteria for disqualification heightens its offensiveness. It is firmly established that the right to engage in litigation is protected by the First Amendment, both as a means of petitioning the government for redress of grievances, *California Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508, 510 (1972), and as an important component of the right of association. *NAACP v. Button, supra,* 371 U.S. at 430. Accordingly, this Court has consistently struck down as offensive to the First Amendment state attempts to interfere with the right to seek redress in the courts. *See, e.g., United Transportation Union v. State Bar of Michigan,*

401 U.S. 576, 585 (1971); *United Mine Workers v. Illinois Bar Ass'n*, 389 U.S. 217, 222-23 (1967).

Similarly, this Court has recently emphasized that the right to engage in advertising to promote political or social goals is deserving of the full range of First Amendment protections. *First National Bank of Boston v. Bellotti, supra*, 435 U.S. at 776. *See also Thornhill v. Alabama*, 310 U.S. 88,101-102 (1940); *Mills v. Alabama*, 384 U.S. 214, 218 (1966); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, supra*, 425 U.S. at 764. Yet petitioner's ordinance directly and seriously impinges on both of these rights, without any demonstration whatsoever that the restrictions are necessary to further any compelling interest.

The ultimate conclusion flowing from this discussion is that petitioner is seeking to decide for all its residents what activities are and are not charitable. On the basis of this judgment, petitioner prohibits or imposes burdensome requirements on the activities of organizations it considers not to be charitable. Under the First Amendment, such content-based governmental interference with the speech and associational activities of organizations such as CBE and *amici* is forbidden, even when the purported goal of the government is the desire to prevent what it sees as fraud. The fact that the solicitation here is conducted by door-to-door canvassing rather than by mail or telephone is irrelevant to the ends that petitioner seeks to achieve. Indeed, the fact that there are requirements related to prevention of fraud imposed by federal and state authorities makes the burden imposed by the ordinance even less justifiable. Petitioner has failed to come forward with any ground for sustaining this serious intrusion on the First Amendment activities of lawful charities, much less a compelling reason. Nor has

petitioner shown that its ordinance is the least restrictive alternative available. Accordingly, this Court should rule that the percentage restriction in petitioner's ordinance is invalid on its face and should be permanently enjoined.

CONCLUSION

For the reasons stated above, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

DAVID C. VLADECK
ALAN B. MORRISON

Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

Attorneys for Amici Curiae
National Committee for Responsive Philanthropy, *et al.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OBJECTIONS TO MOTIONS FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF LOS ANGELES COUNCIL OF NATIONAL VOLUNTARY HEALTH AGENCIES, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U. S. A., THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, THE LUTHERAN COUNCIL IN THE U. S. A., HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRSTIANITY, NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY, PUBLIC CITIZEN, NATIONAL ORGANIZATION OF WOMEN LEGAL DEFENSE AND EDUCATION FUND, NATIONAL BLACK UNITED FUND, NEW YORK PUBLIC INTEREST RESEARCH GROUP AND AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioner,
Village of Schaumburg.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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NOW COMES the Village of Schaumburg, petitioner herein, by Jack M. Siegel, its attorney, and pursuant to Rule 42(3) of the United States Supreme Court, objects to the various motions for leave to file *amicus curiae* briefs, which motions have heretofore been filed on behalf of the Los Angeles Council of National Voluntary Health Agencies, National Council of Churches of Christ in the U. S. A., the Baptist Joint Committee on Public Affairs, the Lutheran Council in the U. S. A., the Holy Spirit Association for the Unification of World Christianity, National Committee for Responsive Philanthropy, Public Citizen, National Organization of Women Legal Defense and Education Fund, National Black United Fund, New York Public Interest Research Group and American Federation of Labor and Congress of Industrial Organizations. In support of said objections, petitioner says as follows:

1. That the motions herein fail to concisely state the nature of the applicants' interest, but instead merely contain general statements as to the nature and activities of the applicants and fail to set forth any justiciable interest in the subject matter of this cause or the issues raised. The various organizations are described in general terms but clearly have no interest in the subject matter of this case.

2. The various motions as indicated by the briefs which are attempted to be filed would substantially broaden the issues herein by attempting to challenge provisions of the ordinance not at issue in the case below. That the various issues raised by the motions are not part of the trial record below and were not considered either by the trial court or the Court of Appeals for the Seventh Circuit.

3. That said motions fail to set forth facts or questions of law that have not been presented by the parties within the framework of this case in the trial court and the Court of

Appeals. Said motions further fail to set forth facts showing wherein the existing parties will not adequately represent the issues properly raised below. That, in fact, the Respondents have heretofore filed briefs in the Court of Appeals and this Court which fully raise all issues within the scope of the cause as heard in the trial court and the briefs of the proposed *amicus curiae* add nothing to the issues which are before this Court but in fact seek to broaden beyond recognition the issue tried by the district court and reviewed by the Court of Appeals.

4. That none of the applicants herein sought to intervene in the trial below in the District Court for the Northern District of Illinois or in the proceedings before the Court of Appeals for the Seventh Circuit and that the general allegations of the motions are insufficient to show the necessity of the applicants' filing briefs as *amicus curiae* in order to fully inform and advise the Court as to the issues in this cause.

5. That the said motions and briefs which are sought to be filed herein rely on facts and issues not raised in the cause below or found in the record in this cause.

6. That the petitioner herein has heretofore withheld permission for the filing of said brief for the reason that the necessity of answering the briefs as *amicus curiae* would impose unreasonable and unnecessary burdens upon the petitioner without any additional aid to this Court.

7. That the applicants herein have attached to the various motions, briefs which they propose to file. That said briefs are sought to be filed without the written consent of all the parties to the case in violation of Rule 42(2) of the Supreme Court of the United States.

WHEREFORE, the petitioner respectfully objects to the filing of the briefs as *amicus curiae* and respectfully requests that the

motions of the various parties as hereinabove set forth for leave to file briefs be denied.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioner,
Village of Schaumburg.

MOTION FILED
JUL 6 1979

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IN THE

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Petitioners,

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Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* ON BEHALF OF THE COALITION OF NATIONAL VOLUNTARY ORGANIZATIONS AND THE FOLLOWING MEMBERS INDIVIDUALLY: AMERICAN HEART ASSOCIATION; AMERICAN RED CROSS; ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES; COUNCIL FOR FINANCIAL AID TO EDUCATION; GIRL SCOUTS OF THE USA; ET AL.*

ADAM YARMOLINSKY
STEPHEN T. OWEN
KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Washington, D.C. 20006
202-467-5900

Attorneys for the Amici Curiae

July 1979

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

*THE AMICI CURIAE

The Coalition of National Voluntary Organizations on its own behalf, and the following member organizations individually: American Heart Association; American Red Cross; Association of Governing Boards of Universities and Colleges; Council for Financial Aid to Education; Girl Scouts of the USA; Lutheran Council in the USA; Mental Health Association; National Institute of Independent Colleges and Universities; National Board of Young Men's Christian Associations; National Conference of Catholic Associations; National Council of Churches of Christ in the U.S.A.; National Council on the Aging, Inc.; National Council on Crime and Delinquency; National Health Council, Inc., and the following member voluntary health agencies; American Cancer Society, American Diabetes Association, American Lung Association, American Social Health Association, Arthritis Foundation, Asthma-Allergy Foundation of America, Committee to Combat Huntington's Disease, Cystic Fibrosis Foundation, Epilepsy Foundation of America, National Easter Seal Society for Crippled Children and Adults, National Foundation—March of Dimes, National Hemophilia Foundation, National Kidney Foundation, National Multiple Sclerosis Society, National Society to Prevent Blindness, Muscular Dystrophy Association, and United Cerebral Palsy Association; Planned Parenthood Federation of America, Inc.; and United Way of America.

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On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

On behalf of The Coalition of National Voluntary Organizations and the following member organizations individually: American Heart Association; American Red Cross; Association of Governing Boards of Universities and Colleges; Council for Financial Aid to Education; Girl Scouts of the USA; Lutheran Council in the USA; Mental Health Association; National Institute of Independent Colleges and Universities; National Board of Young Men's Christian Associations; National Conference of Catholic Associations; National Council of Churches of Christ in the U.S.A.; National Council on

the Aging, Inc.; National Council on Crime and Delinquency; National Health Council, Inc., and the following member voluntary health agencies: American Cancer Society, American Diabetes Association, American Lung Association, American Social Health Association, Arthritis Foundation, Committee to Combat Huntington's Disease, Cystic Fibrosis Foundation, Epilepsy Foundation of America, National Easter Seal Society for Crippled Children and Adults, National Foundation—March of Dimes, National Kidney Foundation, National Multiple Sclerosis Society, National Society to Prevent Blindness, Muscular Dystrophy Association, and United Cerebral Palsy Association; Planned Parenthood Federation of America, Inc.; and United Way of America, leave is hereby requested to file the attached brief *amicus curiae* in the above-captioned action. The consent of the attorney for the respondents, for filing of the attached brief, has been obtained. The consent of the attorney for the petitioners Village of Schaumburg, *et al*,, was requested but refused.

The organizations requesting leave to file a brief *amicus curiae*, on their own behalf and on behalf of numerous other organizations with similar interests in this case, are major national voluntary organizations in the United States.

The direct and immediate interest of these organizations in this case arises from the fact that because they operate on a nationwide basis they are subject to a patchwork of state and local regulations governing charitable solicitation, of which the ordinance of the Village of Schaumburg, subject of the instant case, is a part.

Many of the organizations supporting the attached brief derive substantial portions of their revenues from door-to-door solicitations and similar direct contact solicitation activities. Hence the cumulative impact, nationwide, of laws, ordinances and regulations like the one

at issue here affects in significant ways the ability of such organizations to conduct effective national fund-raising campaigns. Indeed, as illustrated by this case, the impact of such ordinances may altogether preclude personal direct contact solicitation by a variety of organizations performing beneficial, and constitutionally protected, activities.

The particular interest of these organizations in submitting a separate statement of position through a brief *amicus curiae* is that, while the respondent herein represents one type of organization subject to the Schaumburg ordinance, the organizations submitting the attached brief represent the views of a broad spectrum of voluntary organizations potentially subject to that ordinance and similar laws. These organizations range from those which, in the words of the court below, can be described as "the more traditional charitable organizations," through organizations engaged largely in public education, to organizations engaged extensively in attempts to influence legislation beyond the limits permitted by Sections 501 (h) and 4911 of the Internal Revenue Code of 1954, as amended, and subject to Section 501(c)(4) or 501(c)(6) of the Code, rather than (as respondents in the instant case), Section 501(c)(3).

Accordingly, the organizations supporting this brief request the opportunity to demonstrate the infirmities of the Schaumburg ordinance, and similar laws, as such laws impact upon a wider range of organizations than is represented by respondents. Moreover, the implications of the Schaumburg ordinance and similar enactments are broader than their impact on door-to-door solicitation, since comparable restrictions can and do impose significant limitations on other forms and techniques of fund-raising used by charitable organizations. "[I]n appraising a statute's inhibiting effect upon [First Amendment] rights, this Court has not hesitated to take into account possible applications of the statute in other

factual contexts besides that at bar." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 432 (1963).

The brief which the *amici curiae* seek leave to file argues that the cumulative impact of Schaumburg-type ordinances on fund solicitation on a national scale, renders them unconstitutional.

In addition to requesting permission to file this brief, we also request permission to participate in oral argument.

ADAM YARMOLINSKY
STEPHEN T. OWEN
KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Washington, D.C. 20006
202-467-5900

Attorneys for the Amici Curiae

July 1979

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On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE*

This brief *amicus curiae* is submitted by The Coalition of National Voluntary Organizations [1] and the following

[1] The Coalition of National Voluntary Organizations acts in this matter through its Board of Directors. It notes that some of its member organizations do not take positions on issues outside their immediate field of charity. The following are members of the Coalition: Agudath Israel of America; Alliance for Volunteerism; American Arts Alliance; American Assn. of Fund Raising Counsel, Inc.; American Assn. of Homes for the Aging; American Cancer Society; American Council for the Arts; American Heart Assn.; American Red Cross; American Theatre Assn.; Assn. of Governing Boards of Universities and Colleges; Conference of Major Superiors of Men; Council for American Private Education; Council for Financial Aid to Education; Council of Jewish Federations; Council on Foundations; General Conference of Seventh Day Adventists; Girl Scouts of the USA; International Service Agencies; Joint Action in Community Service; Leukemia Society of America; Lutheran Council in the USA; Lutheran Resources Commission; Mental Health Association; National Assembly of Com-

member organizations individually: American Heart Association; American Red Cross; Association of Governing Boards of Universities and Colleges; Council for Financial Aid to Education; Girl Scouts of the USA; Lutheran Council in the USA; Mental Health Association; National Institute of Independent Colleges and Universities; National Board of Young Men's Christian Associations; National Conference of Catholic Associations; National Council of Churches of Christ in the U.S.A.; National Council on the Aging, Inc.; National Council on Crime and Delinquency; National Health Council, Inc., and the following member voluntary health agencies: American Cancer Society, American Diabetes Association, American Lung Association, American Social Health Association, Arthritis Foundation, Committee to Combat Huntington's Disease, Cystic Fibrosis Foundation, Epilepsy Foundation of America, National Easter Seal Society for Crippled Children and Adults, National Foundation—March of Dimes, National Kidney Foundation, National Multiple Sclerosis Society, National Society to Prevent Blindness, Muscular Dystrophy Association, and United Cerebral Palsy Association; Planned Parenthood Federation of America, Inc.; and United Way of

munity Arts Agencies; The National Assembly of National Voluntary Health and Social Welfare Organizations, Inc.; National Assn. for Hospital Development; National Assn. of Independent Colleges and Universities; National Audubon Society; National Center for Voluntary Action; National Conference of Catholic Charities; National Council of Churches of Christ—Commission on Stewardship; National Council on the Aging; National Council on Philanthropy; National Council of Women in USA; National Council of YMCAs of USA; National Foundation—March of Dimes; National Health Council, Inc.; National Society of Fund Raising Executives, Inc.; National Urban League; Planned Parenthood—World Population; Salvation Army-Headquarters Division; United Methodist Church—General Council on Finance and Administration; U.S. Catholic Conference; U.S. Olympic Committee; United Way of America; Volunteers of America; and Zero Population Growth. The National Council of Churches of Christ in the U.S.A. is a cooperative agency of thirty national Christian religious bodies having an aggregate membership of over forty million.

America, on the side and in support of respondent Citizens for a Better Environment.

INTRODUCTION

This case presents the question whether, and to what extent, a local government may impose restrictions upon charitable solicitation without violating rights guaranteed by the First Amendment of the Constitution of the United States. Petitioner Village of Schaumburg, by local ordinance, imposed substantial restraints on charitable solicitation within its boundaries, including an outright prohibition of solicitation by any organization that expends for charitable purposes, as defined in the ordinance, less than 75% of amounts received as contributions. Respondent Citizens for a Better Environment, an Illinois not-for-profit corporation created for the purpose of protecting, enhancing and maintaining the environment within the State of Illinois,[2] was precluded by the Schaumburg ordinance from soliciting for contributions within the Village by reason of its failure to satisfy that percentage requirement. The United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, held the Schaumburg ordinance unconstitutional as applied to Citizens for a Better Environment on the ground (Petition for Writ of Certiorari, Appendix A, p. A-10): that the 75% limitation:

> is on its face unreasonable when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization.

[2] Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, pp. 2-3.

However, the Court of Appeals qualified its decision as follows (Petition for Writ of Certiorari, Appendix A, p. A-10):

> We do not decide the reasonableness of the 75 percent requirement as applied to solicitation by the more traditional charitable organizations.

INTEREST OF THE AMICI CURIAE

The *amici curiae* by and on whose behalf this brief is filed are major national voluntary organizations[3] of the United States. Because they operate on a nationwide basis, these organizations are subject to a patchwork of state and local laws regulating charitable solicitation, of which the ordinance of the Village of Schaumburg is a part. A number of the *amici curiae* derive a large percentage of their revenues from door-to-door solicitation and similar direct personal contact solicitation. Hence, the cumulative impact of state and local regulations, like the subject ordinance, substantially impairs the ability of these organizations to conduct effective national fund-raising campaigns.

The particular interest of the *amici curiae* in submitting a separate statement of position is that while the respondent Citizens for a Better Environment represents one type of organization subject to the Schaumburg ordinance, the organizations submitting this brief represent a broad spectrum of organizations potentially subject thereto, including "the more traditional charitable

[3] The American Red Cross has been recognized by this Court to be a federal instrumentality and, accordingly, enjoys immunity from the "patchwork" of state and local statutes and ordinances regulating charitable solicitations and contributions. See *Department of Employment* v. *United States*, 385 U.S. 355 (1966). Notwithstanding such exemption from nonfederal regulation, however, the Red Cross joins in and fully supports this brief *amicus curiae* because of the seriously adverse effects the Schaumburg ordinance and similar enactments impose upon federated fund-raising organizations with which the Red Cross participates in the solicitation of charitable contributions.

organizations" (as to which the Court of Appeals reserved judgment), organizations largely engaged in public education, and organizations primarily active in efforts to influence legislation.

Moreover, the implications of the Schaumburg ordinance and similar enactments are broader than their impact on door-to-door solicitation, since comparable restrictions can and do impose significant limitations on other techniques of fund-raising used by charitable organizations. "[I]n appraising a statute's inhibiting effect upon [First Amendment] rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 432 (1963).

SUMMARY OF ARGUMENT

Arbitrary percentage limitations on fund-raising and administrative costs of charitable solicitation, like that imposed by the Village of Schaumburg, unreasonably restrain fund-raising abilities of many charitable organizations, and so violate First Amendment guarantees of free expression. Further, the Schaumburg ordinance, and similar enactments, which may exclude many charitable organizations altogether from solicitation, which impose unreasonable restraints on recruitment and use of volunteer workers, and which impair the free exercise of religious liberty, similarly violate the First Amendment and deprive the charities of the equal protection of the law. Private voluntary, charitable organizations that operate on a national scale are seriously impacted by the patchwork of state and local regulation, which imposes a myriad of conflicting and confusing restrictions on door-to-door solicitation and other vital fund-raising methods. Such restrictions are overbroad, and unnecessary to accomplish valid police power objectives of states and localities, which could be satisfied by reasonable uniform disclosure requirements.

ARGUMENT

1. PRIVATE NON-PROFIT GROUPS AS A VEHICLE FOR THE EXERCISE OF FIRST AMENDMENT FREEDOMS HAVE INCREASINGLY BEEN THREATENED BY THE DIFFICULTY OF SECURING A BROAD BASE OF PRIVATE FINANCIAL SUPPORT.

Private voluntary organizations attempting to serve the public interest on a not-for-profit basis, have been a special characteristic of American society at least since the early days of the Republic, as de Tocqueville's often-quoted observation demonstrates.[4]

Private contributions of money and property in the non-profit sector have been estimated in recent years to exceed 26 billion dollars annually,[5] with contributed hours

[4] "Americans of all ages, all stations in life, and all types of disposition are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types—religious, moral, serious, futile, very general and very limited, immensely large and very minute. Americans combine to give fetes, found seminaries, build churches, distribute books, and send missionaries to the antipodes. Hospitals, prisons, and schools take shape in that way. Finally, if they want to proclaim a truth or propagate some feeling by the encouragement of a great example, they form an association. In every case, at the head of any new undertaking, where in France you would find the government or in England some territorial magnate, in the United States you are sure to find an association." ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 485 (J. Mayer & M. Lerner Ed. 1966).

[5] Estimate given is for 1973. COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS, REPORT—GIVING IN AMERICA—TOWARD A STRONGER VOLUNTARY SECTOR 14 (U.S. Dep't of the Treasury, 1975) (hereinafter "Filer Commission Report"). For 1978, contributions by individuals is estimated to have totaled 32.8 billion dollars. American Association of Fundraising Council, Giving USA—1979 Annual Report 10 (1979). See also Nelson, "Private Giving in the American Economy, 1960-1972", in I Research Papers Sponsored by the Commision on Private Philanthropy and Public Needs—History, Trends and Current Magnitudes 115, 127 (U.S. Dep't. of the Treasury, 1977) (hereinafter "I Filer Research Papers"); Rudney, "The Scope of the Private Voluntary Charitable Sector", in I Filer Research

of volunteer service time, nearly 6 billion hours annually, having a value in excess of an additional 26 billion dollars. There are estimated to be as many as 6 million organizations in the private voluntary non-profit sector, employing one out of every ten service workers in the United States, and one out of six professional workers,[6] —together with countless millions of volunteer workers.

The Commission on Private Philanthropy and Public Needs gave an "intuitive indication" of the diversity within the private non-profit voluntary sector by the following "minute sample":

> Bedford-Stuyvesant Restoration Corporation, Phillips Exeter Academy, American Acupuncture and Herbs Research Institute, Senior Citizens Association of Wausau (Wisc.), Talmudic Research Institute, New Alchemy Institute, Aspen Institute for Humanistic Studies, Chapin School Ltd., Citizens Committee of Modernization of Maryland Courts and Justice, Bethlehem (Pa.) Public Library, Visiting Nurse Association of Milwaukee, YMCA Railroad Branch of Toledo, Chinatown (N.Y.) Day Care Center, Zen Center of Los Angeles, Big Brothers of Rapid City, World Affairs Council of Syracuse, N.Y., American Parkinson Disease Association, Bethel Temple of Evansville (Ind.), Metropolitan Opera Company, Fathers Club of Mt. St. Mary's Academy (Watchung, N.J.), Mothers Club of Stanford University, Sons and Daughters of Idaho Pioneers, Family Planning Committee of Greater Fall River (Mass.)[7]

Papers 135; Morgan, Dye, & Hybels, "Results from Two National Surveys of Philanthropic Activity," in I Filer Research Papers 157, 224; Roistacher & Morgan, "Charitable Giving, Property Taxes, and Itemization on Federal Tax Returns, A Final Report from a National Survey," Institute for Social Research, University of Michigan (1974).

[6] Filer Commission Report, note 5 *supra*, p. 11.

[7] Filer Commission Report, note 5 *supra*, pp. 36-37.

While individual private voluntary organizations perform some specialized functions, they often combine philanthropy in the usual sense, *i.e.*, support for the poor and unfortunate, with innovation, education, and advocacy of new and sometimes controversial, even unpopular, ideas about how to deal with unsolved social problems.

The financial base of private philanthropic giving is quite broad. While a disproportionate amount comes from high-income contributors, it is estimated that more than half comes from households with annual incomes of less than $20,000.[8] Contributions of time are even more broadly distributed than contributions of money and property. There are also indications that those who give volunteer service are likely in addition to contribute money or property, so that opportunities for volunteer service tend to broaden and expand the availability of voluntary financial support.[9]

Notwithstanding the impressive statistics of charitable giving, however, the base of private voluntary support has been seriously eroding over the past twenty years. Giving by individuals declined about 15 percent between 1960 and 1972.[10] One key indicator of this decline, "net contributions", *i.e.* total contributions less the reduction in federal income taxes to which contributors are entitled, declined from 3.5 percent of adjusted gross income in 1956 to 2.1 percent in 1970—a 60% decline.[11]

The decline in contributions has been attributed to economic uncertainty, inflation, social disorganization and other factors. Whatever its causes, it is unhappily coupled with an overall increase in the cost of performing philanthropic activities, which, economists have calculated, significantly outruns the effects of inflation on the general national economy.[12] At the same time there is increasing emphasis on programs of charitable organizations which are designed to reach disadvantaged groups outside the scope of the traditional beneficiaries of charitable activities, increasing complexity of the social problems with which these organizations are faced, and the rising cost of fund-raising itself. These trends have further exacerbated the difficulties attendant upon declining percentages of individual giving. Moreover, unlike businesses operating on a for-profit basis, a charity cannot pass on any portion of its increased costs to contributors or charitable beneficiaries. Accordingly, any limitation on the charity's ability to raise funds has a severe impact on its ability to perform charitable functions, and indeed, to function as a viable entity.

[8] Filer Commission Report, note 5 *supra*, p. 14; Morgan, Dye, & Hybels, note 5 *supra*, pp. 160-167.

[9] Morgan, Dye & Hybels, note 5 *supra*, p. 228; Roistacher & Morgan, note 5 *supra*.

[10] Filer Commission Report, note 5 *supra*, pp. 70-71; Nelson, note 5 *supra*, pp. 125-129.

[11] Filer Commission Report, note 5 *supra*, p. 71.

[12] Economist Ralph Nelson has concluded that:

> The general rise in prices, however, does not take full account of the price rise in the particular kinds of services purchased by private giving. The production of philanthropic services is more predominantly labor intensive than is the production of goods and services in general. To appreciate this one need only recall that the major part of philanthropic spending purchases religious pastoral and educational service, college education, medical and hospital care, and music, dance, and drama. In the production of these services there is limited opportunity for the substitution of capital for labor and limited opportunity for reduction in the unit cost, and price, of these services.

Nelson, note 5 *supra*, at 117.

See also Appendix A, Table A-4, thereto, "Price Deflators Used for Specific Categories of Recipients," which indicates the dramatic increase (1960-1972) in costs of providing charitable services. Nelson, note 5 *supra*, p. 133.

The court below did not reach the question of the effect of the ordinance on "the more traditional charitable organizations." But this Court has traditionally been particularly sensitive to First Amendment rights of all charitable organizations, and has considered them in a separate context from situations involving commercial organizations and activities. *Schneider* v. *Irvington*, 308 U.S. 147, 165 (1939). The First Amendment right of charitable organizations to communicate to the public the needs of those who depend upon their support —the poor, the sick, the ignorant, the elderly—are as much a part of the nation's political fabric as the advocacy of governmental action. "These eleemosynary institutions do not fill the place, which would otherwise be occupied by government, but that which would otherwise remain vacant." *Trustees of Dartmouth College* v. *Woodward*, 17 U.S. (4 Wheat.) 518, 647 (1819).

2. DOOR-TO-DOOR SOLICITATION IS AN ESSENTIAL ELEMENT IN THE FUND RAISING EFFORTS OF NATIONAL ORGANIZATIONS.

Door-to-door, and other direct personal contact solicitation,[13] is a vital fund-raising method for many charitable organizations of nationwide scope. Not only is the amount of funds accrued through such solicitation substantial, but door-to-door solicitation is principally carried on through the efforts of volunteer workers.[14] The fund-

[13] In this connection, the Schaumburg ordinance controls not only door-to-door solicitation, but also any "use of the public streets and public ways" for solicitation purposes. Petition for Writ of Certiorari, Appendix A, p. A-18. Examples of direct contact solicitation on a national basis include the "Mother's March" of the National Foundation—March of Dimes, Girl Scout cookie sales, the Salvation Army's Christmas kettles, and "porch light" campaigns used by many organizations.

[14] The organizations supporting this brief *amicus curiae* use few, if any, paid or professional solicitors in nationwide door-to-door campaigns.

raising expense incurred by this method is, therefore, lower than for other forms, such as mail and telephone solicitation. Accordingly, any significant impairment of door-to-door solicitation not only deprives charitable organizations of an important source of funds, but also forces them to rely on more costly fund-raising methods.

The importance of door-to-door solicitation for nationwide charities can be readily perceived by reference to voluntary health organizations which engage in substantial door-to-door and other direct contact fund-raising solicitation activities. In a survey of major voluntary health organizations, conducted by the National Health Council to aid in preparation of this brief, eleven such organizations furnished figures on total contributions received through door-to-door and similar direct contact solicitation, on a nationwide basis, for their most recent fiscal years. Cumulatively, these charities obtained approximately 45% of all contributed funds through such direct contact methods, ranging from 77% for the National Kidney Foundation, down to 13% for the National Easter Seal Society.[15] Similarly, the United Way of

[15] The specific breakdown is as follows:

Name of Organization	Estimated Total Contributions for Most Recently Completed Fiscal Year	Amount Raised in Personal Solicitation Activities (Approximate)	
National Foundation—March of Dimes	$ 62,396,000	$ 32,641,000	(52%)
American Cancer Society	90,000,000	27,721,816	(31%)
National Easter Seal Society for Crippled Children and Adults	37,968,385	4,997,520	(13%)
Muscular Dystrophy Association, Inc.	65,016,996	29,866,482	(46%)

[Footnote continued on page 12]

America furnished an estimate that in 1978 local United Way organizations alone raised approximately $33,000,000 by residential campaigns.

While these figures are only illustrative, they do confirm that door-to-door solicitation is significant to many national charities, and essential to some, and that the impact of unreasonable restrictions thereon by states and localities, like the Village of Schaumburg, can severely impair, if not destroy, the ability of these organizations to function.

Further, the burdensome nature of Schaumburg-type ordinances goes beyond the issue whether a given charity can qualify under a local ordinance and obtain a permit to solicit. Even those organizations which can meet the bewildering array of restrictions and qualifying requirements are often, as a practical matter, precluded from

[15] [Continued]

Name of Organization	Estimated Total Contributions for Most Recently Completed Fiscal Year	Amount Raised in Personal Solicitation Activities (Approximate)	
Cystic Fibrosis Foundation	14,000,000	9,192,000	(66%)
Arthritis Foundation	17,150,000	9,750,000	(57%)
National Kidney Foundation	7,783,000	6,000,000	(77%)
United Cerebral Palsy Associations	21,000,000	9,262,227	(44%)
American Diabetes Association	6,297,467	2,450,000	(39%)
National Multiple Sclerosis Society	25,000,000	18,019,000	(72%)
American Heart Association	56,002,264	13,125,624	(23%)
Totals	$381,964,112	$173,025,659	(45%)

conducting campaigns. This preclusion results from the circumstance that such restrictions, particularly those that impose burdens on volunteer workers, such as individual registration, fingerprinting, photographing, or requirements that they obtain identification papers and badges, make it difficult, if not impossible, for the charities to attract sufficient volunteers to carry on a campaign.[16] Limitations on the days in which campaigns can be conducted, and reducing the hours within the day when solicitation can be made pose similar problems.

Accordingly, a regulatory scheme that impairs the ability of charitable organizations to conduct door-to-door and other direct contact solicitation poses a serious threat to the ability of those organizations to function in the charitable sector.

3. AN ARBITRARY LIMIT ON SOLICITATION COSTS IMPOSES UNREASONABLE BURDENS ON THE EXERCISE OF FIRST AMENDMENT FREEDOMS.

The percentage cost of fund-raising activities is not an adequate measure of the efficiency or effectiveness of a charitable organization. The costs incurred during fund raising campaigns are a function of many diverse factors, largely beyond the control of the organization,[17] including the popularity or unpopularity of the cause, the

[16] In this connection, and in connection with the preparation of this brief, the National Mental Health Association of Greater Chicago submitted a report on its experiences in the Greater Chicago area in recent years, in attempting to comply with the patchwork of local ordinances currently in force in Schaumburg and neighboring municipalities. While not submitted here as evidentiary material, the report provides a perspective on the nature and magnitude of the problem at issue, and is appended hereto as Appendix B.

[17] Smallwood & Levis, "The Realities of Fund-Raising Costs and Accountability," PHILANTHROPY MONTHLY, September 1977, at 7, 11-16.

extent it appeals to high-or-low income groups,[18] and the novelty of the appeal (which can be a positive or negative factor).[19] The cost of door-to-door solicitation is further affected by such factors as the availability of dedicated and skilled volunteers, the geographic and demographic characteristics of the area being covered, and the extent to which solicitors may be required to explain to potential contributors the nature, objectives and method of the organization for which contributions are being solicited; it is even affected by the weather. Older, well-established charities will normally have lower fundraising costs than newer, small groups which cannot initially readily attract significant numbers of volunteer solicitors.[20] These factors vary to a great extent from

[18] For example, a survey reported in Morgan, Dye & Hybels, note 5 *supra*, p. 208, indicated that low-income donors gave an overwhelming percentage of contributions to religious organizations, while high-income donors contributed only marginally to such groups. By contrast, high-income donors contribute a significant portion of their total contributions to institutions of higher education, and other educational organizations. While both high-and low-income groups make substantial contributions to health and medical organizations, closer analysis indicates that low income donors give mainly to "mass-appeal" health organizations, whereas the well-to-do give directly to particular hospitals. See also Filer Commission Report, note 5 *supra*, pp. 132-133.

[19] National Health Council, VIEWPOINTS—STATE LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC 5 (1976 Rev. Ed.). In a prepared statement submitted to the House Subcommittee considering federal regulation of charitable solicitation, the Vice President of the Council of Better Business Bureaus stated:

> [O]rganizations working for unknown or unpopular causes must expend greater fund raising efforts that will inevitably result in higher fund raising costs. Clearly, an appeal for a rare disease will not elicit as great a response from the public as an appeal for cancer. Moreover, such organizations attract fewer volunteer (sic) whose efforts can help reduce fund raising percentages.

Hearings on H.R. 41 before the Subcomm. on Postal Personnel and Modernization of the House Comm. on Post Office and Civil Service, 95th Cong. 1st Sess. 193 (hereinafter "Hearings on H.R. 41") (Statement of Helen L. O'Rourke).

[20] "Organizations with long range capital campaigns would necessarily have high costs for the first year or two and income for the same period would be on the low side. Donors presented with these statistics would get a distorted view of the effectiveness of the organizations' fundraising ability and this view could result in a lack of support critical to the program's success.

Basically, these requirements favor those organizations which have been established for a period of time, which are relatively well known to the general public and which have a large segment of volunteer workers. These organizations, if compared with some others without the benefits they enjoy, would have a low percentage of fundraising costs and if the public were to make their determination to give only to those with the lower costs, the others would, in all probability, cease to exist." Hearings on H.R. 41, note 19 *supra*, p. 75 (Statement of John J. Schwartz).

organization to organization, program to program, and campaign to campaign,[21] and are almost totally beyond the control of the organization.[22]

[21] National Health Council, VIEWPOINTS: STATE LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC 5 (1976 Rev. Ed.); Boyle & Jacobs, "Fund Raising Costs," PHILANTHROPY MONTHLY, April, 1979, at 5.

[22] Moreover, it is frequently difficult to distinguish with precision fund-raising from program costs, for example, where a charitable organization conducts a single campaign with important educational and information-gathering objectives as well as fundraising objectives. In such case, a substantial portion of costs incurred in conducting the campaign may reasonably and properly be attributed to program activities rather than fund-raising. Yet, many established charities, such as the United Way and the members of the National Health Council, have adopted conservative accounting and financial reporting standards, such as the standards established in *Audits of Voluntary Health and Welfare Organizations* (1974) of the American Institute of Certified Public Accountants. These standards have been implemented by the organizations in, for example, *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Agencies* (1974 Rev.), jointly issued by the National Health Council, the United Way and the National Assembly of Voluntary Health and Social Welfare Organizations; and United Way of America, *Accounting & Financial Reporting* (1974). These standards provide generally that costs incurred jointly for fund-raising and program activities should be allocated entirely to fund-raising expense rather than program costs. By contrast, newer organizations, including many advocacy-type organizations, may adopt more flexible standards, such as *Accounting Principles and Reporting Practices for Certain Non-Profit Organizations* (Draft, 1978), also by the American Institute of

The patchwork nature of the state and local regulatory scheme makes it particularly difficult for national organizations to comply with regulations of the type at issue here.[23] "[I]n appraising a statute's inhibiting effect

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Certified Public Accountants, which recommend that a substantial portion of costs associated with fund-raising activities be allocated to program expense. In each case, the organization would with equal candor, conform its accounting practices to nationally recognized and generally accepted accounting standards, with the result, however, that the established organization might be unable to satisfy a twenty-five percent limitation on administrative costs, while the new group would succeed. No public purpose could reasonably be served by such disparate treatment, but the very possibility that such a result might obtain illustrates the inherently arbitrary character of percentage limitations.

[23] For example, in testimony before a House subcommittee considering federal regulation of charitable solicitation, former Postmaster General J. Edward Day, speaking on behalf of Project Hope and other organizations, stated:

> It bears emphasis that the prospect of inconsistent legislation in this field by States and localities is very real. . . . [A]t least 18 States and the District of Columbia require specific information to be filed with the State government prior to solicitation of contributions from citizens of that State.
>
> Many other States are presently considering legislation which would further regulate the solicitation of charitable contributions. A number of municipalities also impose their own additional requirements.
>
> While the purpose of these laws is identical, the specific forms which they take vary in detail as a result of their being enacted by scores of different legislative bodies. Usually, the variations are just enough to require the charitable organization to spend valuable time and effort to comply with the form of each different law; rarely, if ever, do the variations represent different judgments as to what is really needed to protect the public.

Hearings on H.R. 41, note 19 *supra*, p. 68 (Statement of J. Edward Day). Similarly, the President of the American Association of Fund Raising Counsel, Inc., testified before the same subcommittee that:

> Just to keep aware of the new laws being introduced in many of our States and municipalities, and the amendments to existing legislation is a mammoth job. And the compliance is costly

upon [First Amendment] rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 432. Given the diversity of fund-raising practices among private voluntary organizations, and the confusing welter[24] of regula-

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> for the charities. This compliance and monitoring necessarily takes away the program dollars that go to the philanthropic causes and funnels them into additional administrative costs.

Hearings on H.R. 41, *supra*, p. 76 (Statement of John J. Schwartz). The President of the National Association for Hospital Development stated in the same hearings:

> At the present, the law on this subject is embodied in over 30 statutes in various States and the District of Columbia and in countless local ordinances. For the most part, these laws are poorly enforced and impose varying requirements, forms, due dates, exemptions, and the like. It is next to impossible for a charitable organization to be fully aware of, let alone comply with, these differing and conflicting laws.

Id. at 140 (Statement of Lynn E. Kandel). A more current survey indicates that as of December, 1978, 39 states had enacted statutes governing charitable solicitation, with a wide variety of requirements. THE PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.). Citation of state statutory provisions governing charitable solicitation is provided in Appendix A.

[24] In a written statement submitted to the House subcommittee considering federal regulation of charitable solicitation, the Section of Taxation of the American Bar Association stated:

> At the present, 31 states, the District of Columbia and innumerable localities (counties, cities and towns) have statutes and ordinances relating to charitable solicitations. The requirements of these laws . . . and the enforcement efforts with respect to them vary considerably. The present legal situation in this regard is sufficiently confusing, to the point that full compliance with all of these laws would be extremely costly and time-consuming and avoidance and violation of these laws is encouraged.

Hearings on H.R. 41, note 19 *supra*, p. 164.

tory requirements from one locality to another, the cumulative effect of ordinances such as the one at issue here cannot help but have an "inhibiting effect" on the First Amendment rights of charitable organizations. Nor are these "inhibiting effect[s]" necessarily limited to advocacy organizations; they extend to "traditional charitable organizations" which may be seeking funds, for example, to report research on newly identified health problems, or which may be attempting to coordinate additional fund raising in many different localities. Further, the multiplicity of registration, permit or license fees in most states and many localities is itself a serious drain on the charities' resources.

The inhibiting effect may be particularly acute in new or special fund-raising situations,[25] where start-up costs may absorb a large portion of early proceeds. This factor further underscores the point that ordinances of the Schaumburg type appear to curb freedom of expression in direct proportion as that expression is critical to the objectives of the organization, and, accordingly, restrict the freedom of individual citizens to participate in the free flow of ideas.

There is a further unreasonable restraint on national organizations. Where conflicting local requirements make across-the-board compliance difficult or impossible, a national charitable organization may simply decide not to solicit funds in particular local jurisdictions. The effect of an organization's withdrawal is to deny citizens of such localities the opportunity to support that charitable purpose, and to deny beneficiaries of the charity across

[25] Until the contributing public learns that these high initial costs are essential for many legitimate, new organizations to get off the ground, the beneficaries [sic] of disclosure [of percentages of program and administrative costs] will be the large, entrenched, non-profit [institutions]. . . .

Hearings on H.R. 41, note 19 *supra*, p. 88 (Statement of Robert O. Bothwell, Executive Director, National Committee for Responsive Philanthropy).

the country the added benefit of those contributions. In this fashion the local authorities have, directly or indirectly, imposed restraints upon a nationwide constituency, in a fashion which may extend far beyond any legitimate local interest, on the grounds of protecting the citizens of a locality from fraud and unreasonable invasion of privacy. But the First Amendment commands a more sensitive approach to regulation which effects protected activity. "[C]onsiderations of this sort do not empower a municipality to abridge freedom of speech and press." *Schneider* v. *Irvington*, 308 U.S. 147, 164 (1939). See also *Tucker* v. *Texas*, 326 U.S. 517, 520 (1946); *Marsh* v. *Alabama*, 326 U.S. 501, 509 (1946); *Martin* v. *Struthers*, 319 U.S. 141, 149 (1943). And such interests may not be served by vesting "in municipal officers the undefined power to determine what messages residents will hear . . . ." *Hynes* v. *Mayor of Oradell*, 425 U.S. 610, 617 (1976); *Thomas* v. *Collins*, 323 U.S. 516, 540-541 (1945); *Lovell* v. *Griffin*, 303 U.S. 444, 451 (1938).

4. THE REQUIREMENT THAT CHARITABLE ORGANIZATIONS SUBMIT PROOF OF EXEMPT STATUS UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE UNREASONABLY EXCLUDES OTHER CHARITABLE ORGANIZATIONS FROM THE EXERCISE OF THEIR FIRST AMENDMENT RIGHTS AND DENIES THEM THE EQUAL PROTECTION OF THE LAWS.

Section 22-20(f) of the Schaumburg Ordinance requires "[s]atisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, Section 501(c)(3)." That requirement excludes a number of charitable organizations, which are not Section 501(c)(3) organizations, but are rather classified under other subsections of Section 501

(c), *e.g.*, Section 501(c)(4),[26] or Section 501(c)(6).[27] Such organizations are particularly dependent on solicitation, not only for fund-raising purposes,[28] but also in order to communicate generally with their constituencies. Examples of this type of organization are the League of Women Voters and Common Cause.

Petitioner apparently argued below that charitable organizations not coming within the scope of the ordinance's definition of "[c]haritable organization" can carry on their solicitation by meeting the qualifications for commercial solicitation. But if this interpretation is adopted, then it would appear that some *bona fide* charities are being subjected to an unreasonable classification in violation of the constitutional requirement of equal protection of the laws. *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969); *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 670 (1966); *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942); *Schneider* v.

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[26] Section 501(c)(4) of the Internal Revenue Code of 1954, as amended, covers:

> (4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

[27] Section 501(c)(6) organizations include:

> (6) Business leagues, chambers of commerce, real-estate boards, boards of trade . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

[28] If the Schaumburg ordinance is read to exclude from charitable solicitation organizations which do not qualify under Section 501(c)(3), but rather fall under other subsections of Section 501(c), then, for example, a community-sponsored childrens' baseball or soccer team would be foreclosed from soliciting funds door-to-door to pay for uniforms, or to send the team to out-of-town championship games.

Irvington, 308 U.S. 147, 164 (1939). The court below considered the ordinance vague on this point, and suggested further that some organizations might not be able to qualify either as charities, or as for-profit groups, and thus might be excluded from soliciting contributions in the Village on any terms (Petition for Writ of Certiorari, Appendix A, p. A-9, n. 6).

If the municipality may avoid the burden of establishing that an organization does not qualify as a "[c]haritable organization," entitled to solicit funds, and may impose the burden on the charity to establish its status as a bona fide charitable organization, through the device of a broadly worded ordinance of the Schaumburg-type, the locality is thus empowered to restrain nationwide charitable solicitation far in excess of the reasonable and legitimate police power concerns of local governing bodies.[29]

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[29] We note that petitioner relies (Petitioner's Brief at 40-41) on the case of *Citizens for a Better Environment, Inc.* v. *Nassau County*, 488 F.2d 1353 (2d Cir. 1973) for the proposition that the courts below erred in deciding this case on motion for summary judgment. The *Nassau County* case is, however, inapposite, for the court therein took great pains to stress the very narrow issue involved (488 F.2d at 1355):

> We stress this narrow scope, because while it is true that underlying this case is the always delicate balance between one man's right to express himself and another's right to be left alone, that troublesome issue is not presented in this appeal. Rather we are asked—as was the district court—to determine whether under state and local law the plaintiffs are completely exempt from local solicitation ordinances which even they concede to be fundamentally valid.

Later (488 F.2d at 1362) the court reiterated this point:

> [A]t the risk of becoming repetitious, it must again be noted that CBE does not question the validity of the local ordinances. This is not, therefore, an action challenging a statute or ordinance as facially invalid under the First Amendment—the type of case where abstention by a federal court has rightly been held to be unwarranted and unwise.

[Footnote continued on page 22]

5. ADEQUATE MEANS ARE AVAILABLE AND IN GENERAL USE IN OTHER JURISDICTIONS TO ACCOMPLISH THE LEGITIMATE POLICE POWER OBJECTIVES OF THE ORDINANCE AT ISSUE.

Reasonable regulation of charitable solicitation has been considered in previous decisions of this Court, and while upholding the right of States and localities to regulate solicitation, this Court has emphasized that "[r]egulation of this area 'must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly . . . .'" *Hynes* v. *Mayor of Oradell*, 425 U.S. 610, 616 (1976) quoting *Thomas* v. *Collins*, 323 U.S. 516, 540-41 (1945). See also *Schneider* v. *Irvington*, 308 U.S. 147, 164 (1939); *Lovell* v. *Griffin*, 303 U.S. 444, 451 (1938). The court below clearly recognized, and followed those pronouncements.[30]

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[29] [Continued]

By contrast, the instant case directly and immediately raises the very serious constitutional questions absent from *Nassau County*, *i.e.*, whether the Schaumburg ordinance is on its face unconstitutional as violative of the First and Fourteenth Amendments.

[30] The Court below stated:

> [W]hen this regulation involves First Amendment activity, that regulation must be accomplished "so as not to intrude upon the right of free speech," 425 U.S. 616, 96 S. Ct. at 1758-59; it must be done "with narrow specificity," 425 U.S. at 620, 96 S. Ct. at 1760, be "suitably designed" to serve the legitimate interest involved, 425 U.S. at 619, 96 S. Ct. at 1760, and must not give broad discretionary powers to municipal officials in granting a permit, 425 U.S. at 617, 96 S. Ct. at 1759.
>
> This framework is consistent with and further explained by previous Supreme Court decisions relating to the regulation of door-to-door solicitation. The Court has recognized the purposes of the protection of the people from fraud and disruption of the peaceful enjoyment of their homes, but has held invalid such regulation when it unreasonably obstructed the collection of funds, *Cantwell* v. *Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940), or when it, in fact, prohibited canvassing and solicitation, *Schneider* v. *State*, 308 U.S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939). In *Martin* v. *Struthers*, 319 U.S. 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943), the Court recognized the need to balance the purposes of protection and peace against the traditions and values of free discussion and the dissemination of ideas.
>
> If the restrictions placed on canvassing and soliciting by section 22-20(g) do not meet these standards, then the provision must fail.

Petition for Writ of Certiorari, Appendix A, p. A-7.

It concluded (Petition for Writ of Certiorari, Appendix A, p. A-11) that the ordinance:

> is not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The freedom of expression of organizations which do not present these problems is also infringed, either by absolute prohibition or the additional burden of the for-profit permit requirements.[31]

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[31] Petitioner contends that the decision of the court below was in conflict with the decision in *National Foundation* v. *City of Fort Worth*, 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970). However, the *National Foundation* case, which upheld a 20% limitation on costs of soliciting is clearly distinguishable, since that ordinance permitted waiver of the percentage requirement on a showing that "a cost higher than twenty per cent is not unreasonable." 415 F.2d at 43-44 n. 2, 46. The Schaumburg ordinance permits no such waiver, and if an organization failed to meet the 25% limit on administrative costs the Village Board apparently had no discretion to issue a permit. But the correctness of the decision in *National Foundation* is not free from doubt. The court gave insufficient consideration to the inherent arbitrariness of any percentage limitation, and insufficient attention to this Court's repeated pronouncements on the very narrow path a governmental body must walk in placing any restrictions on constitutionally protected expression. The court erred in granting the ordinance a "strong presumption of constitutionality," 415 F.2d at 46, and in placing the burden on the charity to show the unreasonableness of the ordinance. The burden should have been on the city to demonstrate that the ordinance constituted a reasonable and sufficiently narrow classification. Accordingly, the decision in *National Foundation* is inconsistent with this Court's decision in *Hynes* v. *Mayor of Oradell* and *Thomas* v. *Collins*, *supra*, and should be disapproved. In this connection, we also call attention to the recent

There can be no reasonable question that the activities of charitable organizations are entitled to full first amendment protections even when they involve fund-raising and solicitation. *Cf. Bigelow* v. *Commonwealth of Virginia*, 421 U.S. 809, 818-19 (1975). To the extent regulation of that type of expression is constitutionally permissible at all, where, as here, "there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Bates* v. *City of Little Rock*, 361 U.S. 516, 524 (1960).

The ordinance at issue contains provisions in addition to the percentage limitation [32] which are of questionable

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decision of the North Carolina Court of Appeals for Mecklenburg County, in *Heritage Village Church* v. *North Carolina*, No. 77CVS6460 (N.C. Ct. App. April 3, 1979) in which the court held invalid a thirty-five percent limitation on charitable fund-raising costs as violative, *inter alia*, of the First Amendment rights of expression and religious freedom, and the Due Process and Equal Protection clauses of the Fourteenth Amendment. The North Carolina court expressly declined to follow the reasoning of the *National Foundation* case.

[32] We also call attention to the recent decision of the United States District Court for the Western District of North Carolina in *Carolina Action* v. *Pickard*, 465 F. Supp. 576 (W.D.N.C. 1979). The court struck down on First and Fourteenth Amendment grounds a municipal ordinance, strikingly similar to the Schaumburg ordinance, which imposed a 25 percent limitation on "the cost of raising the funds and all expenses incident to the solicitation (including all fees and commissions paid or to be paid to the promoter or promoters of the same) . . . ." 465 F. Supp. at 584. The court stated (465 F. Supp. at 581):

> The mandatory imposition of the 25% cost-of-solicitation rule set out in § 2-30 is overly broad. It stultifies protected speech, as it makes the ability to engage in neighborhood canvassing-solicitation dependent on a showing that plaintiff's representatives and ideas will be sufficiently popular to obtain at least $3 in contributions above every $1 expended in the canvass. Such a requirement is likely to operate most seriously to the detriment of those organizations espousing unusual or unpopular views and therefore most urgently in need of protection from encroachments on their First Amendment rights. It is the unpopular or unusual organizations whose survival may depend on being able to conduct the type of integrated campaign utilized by plaintiff. The imposition of a 25% cost-of-solicitation limitation, without providing relief for organizations that can demonstrate their bona fides and good reason for being relieved of the percentage limitation, ultimately and unlawfully serves, as it might have here, to make the right to engage in neighborhood canvassing depend on the content of the canvassers' message rather than on the legitimate interest of the community in the character of the canvassers. See *Hynes*, *supra* at 617, 96 S. Ct. 1755; *accord*, *Citizens for a Better Environment* v. *Schaumburg*, 590 F.2d 220 (7th Cir. 1978).

validity, but have not as yet been subject of judicial scrutiny, governing registration of solicitors and dates and times of solicitation, and forbidding solicitation at certain hours or on certain premises.

Further, the ordinance is patently ambiguous in its treatment of salaries, as noted by the court below. Petition for Writ of Certiorari, Appendix A, pp. A-8 - A-9. Surely, the salary of a medical researcher, for example, engaged in carrying out the very objectives for which the charity came into existence, would constitute a program expense, and not in any sense an administrative or fund-raising expense. The ordinance, however, offers no such assurance, and is accordingly, as the court below found, unconstitutionally vague. See also *Carolina Action* v. *Pickard*, 465 F. Supp. 576, 582 (W.D.N.C. 1979). In addition, to assume, as does the Village of Schaumburg, that all "[a]dministrative expenses" are not "used for the charitable purposes of the organization" is to assume that such organizations live on air. Moreover, the ordinance is unclear as to the status of religious charitable organizations, notwithstanding the very strong protection the First Amendment accords "free exercise" of religious belief, and the corresponding restraint the Court has imposed on states and localities attempting to regulate to any degree such religious expression. *Cantwell* v. *Con-*

necticut, 310 U.S. 296 (1940); *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943).

The Court of Appeals questioned the Village's assertion that religious and political organizations are not subject to the ordinance, stating that such an exclusion "seems inconsistent with the broad definition involved" (Petition for Writ of Certiorari, Appendix A, p. A-8, n. 5). Such uncertainty would make the ordinance impermissibly vague. *Hynes* v. *Mayor of Oradell*, 425 U.S. 610 (1976).

Village counsel admits the inclusion of religious organizations under the ordinance would violate the First Amendment [33] (Petition for Writ of Certiorari, Appendix A, p. A-8, n. 5). Despite this admission, at least five states [34] and many localities include religious organizations under statutes that limit expenditures for charitable solicitation. *Cantwell* v. *Connecticut*, 310 U.S. 296, 305 (1940), made clear that regulation of solicitation by religious groups may not "unreasonably obstruct or delay the collection of funds." Under *Cantwell*, a state is free to regulate the time and manner of religious solicitation, as it is with other groups (310 U.S. at 306). It may also require a religious solicitor "to establish his identity and his authority." Statutes like that of the Village of Schaumburg go far beyond the kind of regulation allowed in *Cantwell*. Such statutes probe deeply into church affairs, and seek to dictate the way in which the church may carry its message to the people, thus appearing to violate both the Free Exercise and Establishment Clauses of the First Amendment.

[33] This admission is not binding on the Court. *Torres* v. *Commonwealth of Puerto Rico*, 47 U.S.L.W. 4716, 4718, n.3 (June 18, 1979); *Sibron* v. *New York*, 392 U.S. 40, 58 (1968).

[34] These states are Connecticut, Minnesota, North Carolina, Rhode Island and Virginia. PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.). The North Carolina statute has recently been held to violate the First, Fifth and Fourteenth Amendments. *Heritage Village Church* v. *North Carolina*, No. 77CVS6460 (N.C. Ct. App. April 3, 1979). In addition a federal magistrate has recommended that the Minnesota statute be struck down for the same reasons. *Valente* v. *Larson*, Civ. 4-78-453 (D. Minn., 4th Div., May 3, 1979).

The ordinance also requires evidence of compliance with the Illinois state statute regulating solicitation of funds. See Ill. Ann. Stat. Ch. 23, §§ 5101, *et seq.* (Smith-Hurd). The Illinois statute contains annual financial reporting requirements, as do 36 of the 38 statutes of other states and the District of Columbia which regulate charitable solicitation.[35] Disclosure, rather than percentage limitations on fund-raising and administrative costs, has been the preferred solution [36] recommended in studies

[35] While the Illinois statute also requires that 75% of a charity's "gross receipts" be paid out for "charitable purposes," under the statutory definition "gross receipts" are determined only *after* deducting the "reasonable and legitimate" costs incurred in fund-raising activities. Ill. Ann. Stat., Ch. 23, § 5109(c) (Smith-Hurd). The Illinois Appellate Court has cautioned that the proviso permitting deduction of fund-raising costs prior to computing gross receipts, and applying the percentage limitation, must be liberally construed. *People* v. *Police Hall of Fame, Inc.*, 60 Ill. App. 3d 331, 17 Ill. Dec. 519, 376 N.E.2d 665, 673, 674 (Ill. App. Ct., 1st Dist., 1978). Thus the Illinois state statute does not present the same problems that are inherent in the Schaumburg ordinance. Petitioner's reliance (Petitioner's Brief at 31) on the *Police Hall of Fame* case in support of the Schaumburg ordinance is, for that reason, misplaced.

[36] As applied to religious organizations, however, disclosure requirements violate the First Amendment because they entangle the State in church affairs, similar to the tax audits and government investigation of church records prohibited in *Walz* v. *Tax Comm'n of the City of New York*, 397 U.S. 664, 674 (1970); and *Lemon* v. *Kurtzman*, 403 U.S. 602, 620 (1971). In *Lemon*, this Court stated:

> In particular the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and which are secular creates an intimate and continuing relationship between church and state. [403 U.S. at 621-22.]

See *New York* v. *Cathedral Academy*, 434 U.S. 125 (1977); *Lemon* v. *Kurtzman*, 411 U.S. 192 (1973). Disclosure requirements could

of the problem of regulating charitable solicitation [37] and in testimony before congressional committees.[38] If the

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create an equally "intimate and continuing relationship between church and State," and for that reason such requirements could violate the First and Fourteenth Amendments.

[37] For example, the Commission on Private Philanthropy and Public Needs concluded that the most meaningful method of making charitable organizations accountable to the public would be a requirement for filing of detailed annual reports on their finances, programs and priorities, including statements of income and expenditures. Filer Commission Report, note 5 *supra*, pp. 162-166. Similarly, the National Health Council has emphasized disclosure and reporting requirements as the best means of regulating charitable solicitations, cautioning, however, that uniform reporting and accounting standards should be utilized in place of the confusing welter of requirements currently in force in the various states and localities. National Health Council, VIEWPOINTS: STATE LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC 2 (1976 Rev. Ed.). In the same connection, the National Health Council has also pointed out the numerous "difficulties inherent in legislating a cost limitation for general application to all charitable solicitations within the state." *Id.* at 5. Further, a report to the Commission on Private Philanthropy and Public Needs on alternative regulatory approaches recommended that "[a]s between a fixed percent limit on the cost of solicitation and the use of disclosure as an indirect means of regulation, we believe that the disadvantages of imposing fixed limitations far outweigh the benefit of protecting the public . . . ." Yarmolinsky & Fremont-Smith, "Judicial Remedies and Related Topics," in V Research Papers Sponsored by The Commission on Private Philanthropy and Public Needs—Regulation 2703 (U.S. Dep't of the Treasury, 1977).

[38] In recent years, bills have been introduced in Congress in an effort to impose uniform nationwide federal standards of accountability on charities. Some bills, like H.R. 1123, 94th Cong., 1st Sess., would have required charities using the mails for solicitation to offer to make available to prospective donees upon request detailed financial information. Other bills, like H.R. 10922, 94th Cong., 2d Sess., would have required charities seeking contributions by mail to accompany the request for donations with a detailed financial statement. Still others, like H.R. 4689 and S. 1153, 93rd Cong., 2d Sess., and H.R. 41, 95th Cong., 1st Sess., would require charities to make annual reports to a federal agency, *e.g.*, the Internal Revenue Service, as well as to each state where solicitations were made. Testimony in hearings on such legislation, by representatives of major charities, has generally supported annual filing requirements, and procedures whereby prospective donors could obtain financial

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data from the charities upon request. On the other hand, such testimony has generally opposed mandatory point-of-contact dissemination of financial data as unduly cumbersome and burdensome, and has uniformly opposed mandatory fixed ratios of fund raising costs to program costs. For example, in Hearings on H.R. 41, note 19 *supra*, the director of development of Save the Children Federation stated:

> Concerning specific requirements of H.R. 41, we are very pleased that it takes the route of public disclosure. This agency feels that the public should be given the information about a charity's use of its contributed income and should be able to make up its own mind as to the merits of the charitable activities. This approach is far better, in our opinion, than establishing arbitrary fund raising and administration ratios.

Hearings on H.R. 41, *supra*, p. 13 (Statement of Kenneth Phillips). Similarly the President of the American Association of Fund Raising Counsel, Inc., stated:

> We think there should be available to the donor, information on the program of that organization, who are its directors or trustees, what its track record might be and, if you will, a history of its finances, not just that of a given year.
>
> All this in a solicitation letter would not be a practical thing to write but if the letter says that the donor can ask for and receive an annual report from the charity, then the donor could make a more careful judgment on whether the charity should be supported.

Hearings on H.R. 41, *supra*, p. 77 (Statement of John J. Schwartz). Along the same lines, the Senior Vice President of the American Hospital Association testified:

> The purpose of this legislation is to provide the American public with information concerning the expenditure of funds solicited for charitable purposes. In support of this goal, the bill requires freer access to financial data about those organizations that use the mails to obtain donated funds. The American Hospital Association supports this intention, and the goal of full financial disclosure, as enunciated in an official AHA policy document, "The Statement on the Financial Requirements of Health Care Institutions and Services," which serves as a set of guidelines for our member hospitals. In this document, the association states that "health care institutions have an obligation to disclose to the public evidence that all their funds are being effectively utilized in accordance with their stated purpose of operation." Thus, we support disclosure efforts that will protect the American public from dishonest fundraising practices.

[Footnote continued on page 30]

purpose of the Schaumburg ordinance is to protect households and the residents thereof from fraudulent solicitation, that purpose can be accomplished without the percentage limitation provision at issue here.

If the purpose of the ordinance is to assure that prospective contributors are fully informed of the way in which their contributions will be employed, that purpose can be accomplished within the framework of carefully-drafted disclosure legislation. There is a serious question, however, whether local government has sufficient interest in the disposition of funds collected, as distinguished from

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[38] [Continued]

Hearings on H.R. 41, *supra*, p. 133 (Statement of Leo J. Gehrig, M.D.).

However, as to "point of contact" disclosure, Dr. Gehrig stated:

> The requirement to disclose the percentage of funds collected that is available for expenditure at the point of solicitation will often, in our view, be misleading. An adequate explanation would, in many cases, entail lengthy explanation, adding significantly to the costs of solicitation. It also would lend a negative note to the solicitations, undermining the positive messages which are so important to successful drives. Ironically, this requirement would increase the very expenses that the bill intends to moderate.

Id. at 135.

And as to fixed percentage limits on fund-raising costs, Dr. Gehrig stated:

> The socioeconomic status of the population solicited will determine, in large measure, the percentage of total funds raised that will be required for administration of the fundraising effort. Much of the costs incurred by hospital development offices—salaries, promotional and mailing fees, et cetera—are relatively fixed but, obviously, hospitals located in more affluent communities raise, on an average, a larger amount per contact than those in less economically advantaged areas. Fundraising costs as a percentage of total funds raised depend on the wealth of the population solicited. Variations in the ratios of fundraising costs to total funds received, therefore, are not measures of efficiency and may inhibit fundraising, particularly in less affluent locales.

Id. at 134-5.

the method of collection, so as to outweigh the inhibiting effect of patchwork regulation on national organizations.

But if, as the court below concluded, the purpose of the ordinance is simply to bar altogether organizations that choose or are compelled to spend 25 percent of the proceeds of solicitations on their administrative costs then, for all the reasons stated above, the ordinance is unconstitutional on its face.

CONCLUSION

Accordingly, the judgment of the courts below should be affirmed.

Respectfully submitted,

ADAM YARMOLINSKY
STEPHEN T. OWEN
1776 F Street, N.W.
Washington, D.C. 20006
202-467-5900

Attorneys for the Amici Curiae

Of Counsel:

KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Washington, D.C. 20006

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Appendices

APPENDIX A

States (and the District of Columbia) which have adopted legislation regulating charitable solicitation, with citation of the pertinent provisions, are as follows:

Arkansas: Arkansas Stat. Ann. Sec. 64-1601, *et seq.* (1959)

California: Cal. Bus. & Prof. Code Sec. 17510, *et seq.* (1972), Cal. Government Code Sec. 12580, *et seq.* (1959)

Colorado: Col. Rev. Statutes Sec. 18-5-115 (1975)

Connecticut: Conn. Gen. Stat. Sec. 17-21e, *et seq.* (1963, amended 1976)

District of Columbia: D.C. Code Sec. 2-2101, *et seq.* (1957) (D.C. Charitable Solicitation Act)

Florida: Florida Statutes Chapter 496 (1974) (Solicitation of Charitable Funds Act)

Georgia: Solicitation Statute—Ga. Code Annotated Sec. 35-1001, *et seq.* (1963); Charitable Trust Statute—Sec. 108-217, *et seq.* (Georgia Charitable Trust Act)

Hawaii: Chapter 467B of Hawaii Revised Statutes (1971)

Idaho: Idaho Code Sec. 67-1401 (1972)

Illinois: Solicitation Statute—Illinois Annotated Statutes Sec. 23-5101 (1974), *et seq.*, Charitable Trust Statute—Sec. 14-51, *et seq.* (Uniform Supervision of Trustees for Charitable Purposes Act)

Iowa: Iowa Code Annotated Sec. 122.1, *et seq.* (1967)

Kansas: Kansas Statutes Annotated Sec. 17-1739, *et seq.* (1974)

Kentucky: Kentucky Revised Statutes Sec. 196.250 (1974), Section 367.510 to 367.540, and Section 367.650 and 367.670 (June 17, 1976)

Maine: Maine Revised Statutes Annotated Sec. 5001, *et seq.* (Effective January 1, 1978)

Maryland: Annotated Code of Maryland Sec. 41-103, *et seq.* (1976)

Massachusetts: Annotated Laws of Mass. Sec. 68-18, *et seq.* (1964)

Michigan: Michigan Compiled Laws Annotated Sec. 400.271, *et seq.* (1975)

Minnesota: Minnesota Statutes Annotated Sec. 309.50, *et seq.* (1973, amended 1978)

Nebraska: Revised Statutes of Nebraska Sec. 28-1401 (1969)

Nevada: Nevada Revised Statutes Sec. 86.190 (1943)

New Hampshire: N.H. Revised Statutes Annotated Sec. 320.1, *et seq.* (1931) and 31.91 (1965)

New Jersey: New Jersey Statutes Annotated Chapter 45-17A, *et seq.* (1971)

New York: McKinney's Consolidated Laws of New York Annotated Solicitation Statute—Article 7-A of the Executive Law (Chapter 669) (1977)

North Carolina: N.C. General Statutes Sec. 108-75.1, *et seq.* (1975)

North Dakota: North Dakota Century Code Chapter 50-22 (1961, amended 1975)

Ohio: Page's Ohio Revised Code Annotated Sec. 1716.01, *et seq.* (1955)

Oklahoma: Oklahoma Statutes Annotated Sec. 18-552.1, *et seq.* (1978) (Solicitations of Charitable Contributions Act)

Oregon: Oregon Revised Statutes Sec. 128.610 to 128-.750, 128.805 to 128.990

Pennsylvania: Purdon's Pennsylvania Statutes Annoted Sec. 10-160-1 (1974) (Solicitation of Charitable Funds Act)

Rhode Island: General Laws of Rhode Island Sec. 5-53-1, *et seq.* (1976)

South Carolina: Code of Laws of S.C. Sec. 67-91, *et seq.* (1972)

South Dakota: South Dakota Compiled Laws Sec. 37-27-1, *et seq.* (1975)

Tennessee: Tennessee Code Annotated Sec. 48-2201, *et seq.* (1977)

Texas: Vernon's Texas Civil Statutes Sec. 1396-1.01, *et seq.* (effective January 1, 1978)

Utah: Utah Code Annotated Sec. 76-10-601 (1973) (Criminal Code)

Virginia: Code of Virginia Sec. 57-48, *et seq.* (1975) Eff. date—July 1, 1976 (Initial Registration not due until July 1978)

Washington: Revised Code of Washington Annotated Solicitation Statute—Sec. 19.09, *et seq.* Charitable Trust Statute—Sec. 19.10, *et seq.*

West Virginia: West Virginia Code Sec. 29-19-1, *et seq.* (1977)

Wisconsin: West's Wisconsin Statutes Annotated Sec. 440.41, *et seq.* (1961)

[SOURCE: THE PHILANTHROPY MONTHLY, SURVEY OF STATE LAWS REGULATING CHARITABLE SOLICITATION (Looseleaf, 1978 Rev.)]

APPENDIX B

[Report of the Mental Health Association of Greater Chicago—June 1979]

ORDINANCES WHICH CAUSE BARRIERS IN BELL RINGER CAMPAIGN IN THE GREATER CHICAGO AREA

BARRINGTON

The Board of Trustees, Village of Barrington, has been denying the Association permission in bell ringer according to our records since 1972. The Village of Barrington recommends that the Association join the Barrington area United Fund. When a letter from the Association Board member who is an attorney was written requesting on what grounds permission was denied, the letter was never answered.

Unofficially, the Association was told that while the Association would never receive permission from the Barrington Village Board to conduct a drive there would be no effort to stop our volunteers from soliciting. Thus, depite denial, the Association continued to recruit members until 1974. However, the denial seemed to have effect as it became more difficult to recruit and those recruiters dropped out at a higher rate than elsewhere. Since 1975, we have not done a bell ringer in Barrington.

ELK GROVE VILLAGE

No legal objection, but requires all solicitors to register and obtain a solicitor's permit between 8:30 a.m. and 5:00 p.m. at the Elk Grove Village office.

Through 1977 we were allowed to send in the names and addresses and obtain the permits which we then enclosed in each kit.

As of 1978, it was required that each individual appear in person and be finger printed. Since then, we have not conducted a drive in Elk Grove Village.

ROLLING MEADOWS

In this community, a tax is levied for mental health services. In view of this, permission to collect has been denied us since 1973.

HOFFMAN ESTATES

Until 1966 the bill ringer campaign was successfully conducted in Hoffman Estates. At the time a local agency, the Northwest Cooperative Mental Health Clinic, was given permission to solicit in the area and our request was denied.

In 1973, permission was again granted, but each marcher was required to wear a special tag. Due to the additional problems caused by the necessity of these tags and their display, we stopped conducting the campaign in 1975.

LA GRANGE

In 1973, the Village Board denied permission to the Association to collect in La Grange. Their rationale consisted of trying to screen out agencies not based in the village.

RIVER GROVE

An ordinance requiring a permit and special tags for bell ringers was enacted in 1978. A permit application along with the list of marcher was to be sent over four weeks in advance of the campaign. We did not apply for the permit in 1978 or 1979.

SCHILLER PARK

An ordinance passed in 1970 requiring registration and finger-printing of solicitors has made it most difficult to engage members. This suburb was removed from our campaign list after 1977.

SCHAUMBURG

Ordinance #1052, Chapter 22, required a permit to solicit and allows the Village Board to set aside special days for collection. One day does not allow for sufficient collection to make our efforts worthwhile. The campaign was discontinued after 1976.

WHEELING

Wheeling-Buffalo Grove has an anti-solicitation ordinance. In the past we received money through the United Fund drive. The Fund did not contribute to us after 1966.

HOMEWOOD

Homewood's Solicitation Ordinance allow only 35 canvassers who are registered and restricts hours of collection to between 9:00 a.m. and 7:30 p.m. The last year we campaigned in this suburb was 1975.

BROOKFIELD

Permission to solicit has been denied by the Village Board since 1973. They feel there would be too many organizations canvassing and oppose such solicitation.

FRANKLIN PARK

The Board of Trustees has granted permission to conduct the campaign if the canvassers are registered and special tags are worn. Our cost for 1978 in Franklin Park was 60% of the money collected. In 1979 we discontinued the campaign in this suburb.

SUMMARY

County	Suburbs	Restrictions	Final Year of Solicitation
Lake	Barrington	Permission denied —1974	1975
North Suburbs			
Cook	Elk Grove Village	Registration and Finger-printed (each marcher)	1977
	Rolling Meadows	Permission denied	1974
	Schaumburg	Special day	1976
	Wheeling	Permission denied	1976
South Suburbs			
Cook	Homewood	Registration	1975
West Suburbs			
Cook	Brookfield	Permission denied	1977
	Franklin Park	Special badges	1977
	Hoffman Estates	Special tags	1975
	LaGrange	Permission denied	1973
	River Grove	Special tags	1978
	Schiller Park	Ordinance—finger prints	1977

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OBJECTIONS TO MOTION OF THE COALITION OF NATIONAL VOLUNTARY ORGANIZATIONS, THE AMERICAN HEART ASSOCIATION, AMERICAN RED CROSS, ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES, COUNCIL FOR FINANCIAL AID TO EDUCATION, GIRL SCOUTS OF THE USA, ET AL., TO FILE BRIEF AMICUS CURIAE.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioner.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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Now Comes the Village of Schaumburg, petitioner herein, by Jack M. Siegel, its attorney, and pursuant to Rule 42(3) of the United States Supreme Court, objects to motion for leave to file *amicus curiae* brief on behalf of the coalition of National Voluntary Organizations, and the following members individually: American Heart Association; American Red Cross; Association of Governing Boards of Universities and Colleges; Council for Financial Aid to Education; Girl Scouts of the USA; et al. In support of said objections, petitioner says as follows:

1. That the motion fails to concisely state the nature of the applicants' interest, but instead merely contains general statements as to the nature of the activities of the applicants and fails to set forth any justiciable interest in the subject matter of this cause or the issues raised. That as set forth in the motion certain of the organizations on their face would not qualify for permits under the Schaumburg ordinances under sections the validity of which is not challenged in this proceeding.

2. That said motion as indicated by the brief which is sought to be filed would substantially broaden the issues herein by attempting to challenge the provisions of the ordinance requiring proof of exempt status under Section 501(c)(3) of the Internal Revenue Code. That said issue is not part of the proceedings herein and the filing of the *amicus curiae* brief would broaden the issues in this cause well beyond those considered by the trial court and the Court of Appeals.

3. That said motion fails to set forth facts or questions of law that have not been presented by the parties within the framework of this case in the trial court and the Court of Appeals. Said motion further fails to set forth facts showing wherein the existing parties will not adequately represent the issues properly raised below. That, in fact, the Respondents have heretofore filed briefs in the Court of Appeals which fully raise all issues within the scope of the cause as heard in the trial court and may be expected to do the same in this court.

4. That none of the applicants herein sought to intervene in the trial below in the District Court for the Northern District of Illinois or in the proceedings before the Court of Appeals for the Seventh Circuit. That the general allegations of the motion are insufficient to show the necessity of the applicants' filing a brief as *amicus curiae* in order to fully advise and inform the court as to the issues in this cause.

5. That said motion and the brief which is sought to be filed rely on facts and issues not raised in the cause below or found in the record in this case.

6. That the petitioner herein has heretofore withheld permission for the filing of said brief for the reason that the necessity of answering the brief as *amicus curiae* would impose unreasonable and unnecessary burden upon the petitioner without any additional aid to this Court.

7. That the applicants herein have attempted to file a brief in support of their motion without the written consent of all parties to the case in violation of Rule 42(2) of the Supreme Court of the United States.

WHEREFORE, the petitioner respectfully objects to the filing of said brief as *amicus curiae* and respectfully requests that said motion be denied.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioner.
Village of Schaumburg